Australian Government

REPORT OF THE EXPERT PANEL ON ASYLUM SEEKERS

AUGUST 2012

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THE REPORT

FOREWORD

This Report has been compiled over a six week period. In this time we have consulted widely on asylum issues with political leaders, other members of the Parliament, agencies and departments of government, non-government organisations (NGOs), academics and other experts as well as those in the wider community. We have also held discussions with representatives of some refugee communities in Australia and refugees who travelled to Australia more recently through irregular means. Our consultations have been conducted in many meetings and through the more than 550 written submissions that we have received.

In all these processes, we have encountered a broad cross section of views on asylum issues and on the direction that Australian policymaking should take. Those views are deeply held and have been strongly argued.

We have applied an overriding priority to addressing the complex and difficult task we have been given. That priority has been to consult in good faith, to base our deliberations on the merits of different points of view, and to propose a way forward that meets the tests of reasonableness, fairness and humanitarian need. In proposing a way forward, our guiding light has been to find practical ways in which to advance the Australian national interest in achieving progress towards the goal of more effective regional cooperation on asylum issues.

There are no quick or simple solutions to the policy dilemmas and the humanitarian challenges that asylum seeking create. In addressing these dilemmas and meeting those challenges, we believe that Australian policy can, and should, be hard headed but not hard hearted; that practicality and fairness should take precedence over theory and inertia; and that the perfect should not be allowed to become the enemy of the good.

We believe that the current impasse on Australian policymaking in relation to asylum issues is not a viable option for the future. The prospect of further losses of life at sea is one that demands urgent and decisive action on the part of the Australian Parliament.

We believe that no single focus can provide an effective basis for policymaking. This is true whether the focus is on better protections for asylum seekers or on disincentives to discourage them from taking dangerous maritime voyages.
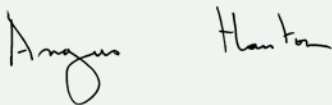
The loss of life on dangerous maritime voyages in search of Australia's protection has been increasing. The number of irregular maritime arrivals (IMAs) who have arrived in Australia in the first seven months of 2012 (7,120) has exceeded the number who arrived in total in 2011 (4,733) and 2010 (6,850). The likelihood that more people will lose their lives is high and unacceptable. These realities have changed the circumstances that Australia now faces. They are why new, comprehensive and integrated strategies for responding are needed. Those strategies need to shift the balance of Australian policies and regional arrangements to give greater hope and confidence to asylum seekers that regional arrangements will work more effectively, and to discourage more actively the use of irregular maritime voyages.

In this context, the Panel believes that to do nothing when there is the ability to do more is unacceptable. Rather than denying asylum seekers the 'right' to take terrible risks, there is a responsibility to create opportunities that would enable their claims to be processed more fairly and effectively in ways that make those risks unnecessary.

We believe that the only viable way forward is one that shifts the balance of risk and incentive in favour of regular migration pathways and established international protections and against high-risk maritime migration.

The recommendations we propose in this Report are aimed at better achieving these purposes. They entail changes in Australian policies and more active support for an enhanced regional cooperation framework on asylum issues. They recommend an increase in Australia's Humanitarian Program to assist in making regular migration pathways work better. They also recommend disincentives to irregular maritime voyages to Australia by establishing a clear 'no advantage' principle whereby asylum seekers gain no benefit by choosing not to seek protection through established mechanisms. These recommendations put a fundamental emphasis on fairness and reasonableness. They constitute an integrated set of proposals. The incentives and disincentives we recommend complement each other. In our view, they need to be pursued in that comprehensive and integrated context as the most effective way of discouraging asylum seekers from risking their lives on dangerous maritime voyages to Australia.
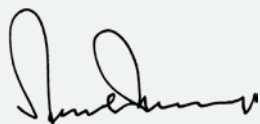
We have appreciated this opportunity to make the contribution embodied in this Report. We thank all those who have contributed to the process, and those who have helped and supported us in a highly professional way, particularly the officers from departments and agencies who have worked as members of our Taskforce. This Report, however, is our responsibility alone and reflects our personal views on the priorities we believe are appropriate. We present this Report in good faith and in the hope that it contributes in a positive way to a productive outcome.

Air Chief Marshal Angus Houston AC, AFC (Ret'd)

Paris Aristotle AM

Professor Michael L'Estrange AO

TERMS OF REFERENCE

The Panel will provide advice and recommendations to the Government on policy options available, and in its considered opinion, the efficacy of such options, to prevent asylum seekers risking their lives on dangerous boat journeys to Australia. As part of its review, the panel will take into account, and provide policy advice on:

- how best to prevent asylum seekers risking their lives by travelling to Australia by boat;
- source, transit and destination country aspects of irregular migration;
- relevant international obligations;
- the development of an inter-related set of proposals in support of asylum seeker issues, given Australia's right to maintain its borders;
- short, medium and long term approaches to assist in the development of an effective and sustainable approach to asylum seekers;
- the legislative requirements for implementation; and
- the order of magnitude of costs of such policy options.

The Panel will consult government and NGOs and individuals. It will have access to the information it requires to support its deliberations and finalise its advice.

The Panel will consult with the Multi-Party Reference Group to understand and take into account the views of the Parliament.

The Panel will provide advice to the Prime Minister and Minister for Immigration and Citizenship prior to the start of the next sitting period in August 2012. The Panel's advice will be released publicly.

OVERVIEW: THE APPROACH UNDERPINNING THIS REPORT

i. The international community faces diverse, difficult and complex challenges in relation to the irregular movement of people across borders. In the context of those challenges, Australia is confronting a particular set of policy circumstances that are the product of realities internationally, in our region and on our borders. There are growing numbers of people seeking protection in Australia through dangerous and irregular maritime voyages. In the period ahead, the number of people seeking protection internationally, including in Asia, is likely to increase – and perhaps very significantly. A consensus in the Australian Parliament on how to best respond to this current and prospective situation, regionally and globally, is proving elusive. Furthermore, while a regional cooperation framework to address the range of these challenges in the Asia Pacific region is both necessary and desirable, its practical development is still at an early stage.

ii. These realities and pressures engage Australia's national interests across a broad spectrum. They engage a fundamental sovereign interest in, and responsibility for, the integrity of Australia's borders. They engage issues relevant to the broad support in the Australian community for our Migration Program – a support which has always underpinned the Program in the past and which is fundamental to its future. They engage a focus on an international environment in which irregular migration and asylum seeking are facilitated by accessible travel, networked people smuggling operations and agents of collusion in many countries. The realities we face also engage Australia's capacity for responding to consequent humanitarian needs, both in their own right and in the context of international humanitarian obligations which Australia has upheld over many decades. In addition, the current situation engages our national capacities in terms of building regional and broader international support for effective protection arrangements over the short and longer term.

iii. These complex and diverse challenges for Australian policymaking frame the central issue in the Panel's Terms of Reference: to assess 'the policy options available… to prevent asylum seekers risking their lives on dangerous boat voyages to Australia'. This issue demands a strategic and comprehensive response. Such a response needs to be hard headed but not hard hearted. It needs to be driven by a clear-eyed practicality, and by a sense of humanity as well as fairness. It needs to advance Australia's sovereign interests but also to recognise the limitations of Australia's capacities when acting alone on these issues. A strategic and comprehensive response needs to reflect circumstances as they currently exist and are likely to develop rather than what they have been in the past. It needs to take account of the balance of risk, incentive and despair that drives many people to do business with people smugglers. Above all, such a response should not allow the perfect to become the enemy of the good.

iv. Australian policy settings do influence the flows of irregular migration to Australia. Those settings need to address the factors 'pushing' as well as 'pulling' the trend toward greater numbers of dangerous irregular maritime ventures to Australia. Australian policy settings, however, cannot resolve current challenges in isolation from the regional and international realities to which they relate. A focused and

sustained response to the asylum seeker issue also needs to encompass more effective Australian strategies in the main source countries for irregular migration flows into South-East Asia and Australia; it needs to facilitate a more practical framework of shared management and responsibility involving Australia and countries in our region; and it needs to actively promote a more productive engagement by the wider international community in addressing the global phenomenon of forced displacement and irregular people movement.

v.   The single most important priority in preventing people from risking their lives on dangerous maritime voyages is to recalibrate Australian policy settings to achieve an outcome that asylum seekers will not be advantaged if they pay people smugglers to attempt dangerous irregular entry into Australia instead of pursuing regular migration pathways and international protection arrangements as close as possible to their country of origin. That is why a regional cooperation framework on protection and asylum issues, reflecting a comprehensive regional approach, is so fundamentally important and such a central focus of this Report.

vi.   A comprehensive regional framework to address asylum seeker issues, encompassing joint approaches and common standards on protections, processing and durable outcomes is an objective to which regional governments are committed. It is also a goal towards which progress will be incremental.

vii.   Some of the building blocks on which a regional cooperation framework can be established are able to be implemented immediately; others will take time and extensive negotiations.

viii.   Australia needs to be an active participant as these processes develop and gather momentum. In the intervening period, Australian policy in its own right needs to pursue a dual approach. It needs to promote incentives to encourage greater use of regular migration pathways and international protection arrangements; and it also needs to implement more effective disincentives to irregular and dangerous maritime voyages to Australia for the purposes of seeking asylum.

ix.   Australia's priorities – in our own national policies and in our engagement within our region and beyond – need to be focused on shifting the current balance of risk and incentive that makes dangerous irregular migration a preferable option for too many people.

x.   At the present time, there are risks and incentives in decisions to take dangerous irregular maritime voyages to Australia – risks in the physical dangers and personal dislocation, but incentives in terms of the prospects if Australian territory is reached and protection secured. The current balance of those risks and incentives still tempts too many asylum seekers to put their lives into the hands of people smugglers.

xi.   By contrast, the use of regular migration pathways and established international protection arrangements have their own risks and incentives – the risk of indefinite delay with inadequate protections and without any durable outcome, set against the incentive of possible resettlement and a new life. The balance of those risks and incentives is too often insufficient to convince asylum seekers that regular pathways are more productive than irregular ones.

xii.   The shift in the balance of risk and incentive that is necessary requires a set of circuit breakers in Australian policymaking which need to operate in a phased and coordinated way at two levels.

xiii. At one level, there is a need for new measures to expand regular humanitarian pathways and make the international protection arrangements more effective. Such measures need to build confidence and hope in established processes through genuine incentives for asylum seekers in the region to participate in needs-based, well-managed, regionally coordinated, safe, orderly and timely processing that delivers durable outcomes.

xiv. Such measures to sustain a more practical, better managed and more coordinated regional framework of cooperation, to address asylum seeking, and to counter people smuggling operations should identify and pursue common interests and shared objectives among regional countries. From Australia's perspective, these measures need to include high-level and broad-ranging bilateral cooperation with Indonesia and Malaysia in particular, and with other regional countries as well. They also need to include shifts in Australian policy settings which encompass significantly expanding and refocusing Australia's Humanitarian Program, enhancing relevant capacity building in South-East Asia as well as in source countries of asylum seeker flows, and addressing the backlog in family reunion under the Special Humanitarian Program (SHP) which risks becoming a significant factor motivating those who choose irregular migration by boat to Australia. Australia also needs to be proactive in encouraging greater responsiveness among resettlement countries in terms of increasing the resettlement places available for those in the region needing protection.

xv. There also needs to be policy circuit breakers operating at a second level. This is required because incentives to utilise existing migration pathways and established international protection arrangements, operating in national or regional contexts or both, will be necessary but they will not be sufficient in their own right as an effective strategy to counter irregular migration flows. Circuit breakers are needed to reduce the attractiveness of Australia as a destination point for irregular migration. They are needed to reinforce a basic principle of fairness – that those who continue to choose irregular maritime voyages to Australia to claim asylum should not be advantaged for doing so over those who pursue regular mechanisms.

xvi. Incentives to use regular migration and protection pathways need to be complemented by policy measures that send a coherent and unambiguously clear message that disincentives to irregular maritime migration to Australia will be immediate and real. Over time, a genuinely regional framework will reduce the lure of irregular maritime migration options through a common approach to the processing of claims and provision of outcomes based on need. Until such a regional framework is established in a practical way, and within a framework of appropriate safeguards, the active discouragement of irregular maritime migration to Australia needs to include the prospect of processing options outside Australia for the determination of protection claims of those who arrive by irregular means.

xvii To support such processing within the development of a comprehensive regional cooperation framework, the Panel believes that the Australian Parliament should agree, as a matter of urgency, to legislation that would allow for the processing of irregular maritime arrivals in locations outside Australia. That legislation should also reserve to the Parliament the provision to allow or disallow the legislative instrument that would authorise particular arrangements in specific locations outside Australia.

xviii. In that context, Australia should move immediately to establish facilities in Nauru and Papua New Guinea (PNG) for the processing of protection claims by IMAs to Australia.

xix.   In addition to the facilities in Nauru and PNG, Australia should also immediately pursue amendments to the Arrangement it negotiated with Malaysia in 2011. In particular, those amendments should strengthen the protections provided under the Arrangement which are relevant to the transfer of a number of IMAs to Malaysia.

xx.   Other measures to discourage dangerous and irregular maritime voyages to Australia should include changes to family reunion arrangements as they relate to IMAs in Australia, a more effective focus on the return of failed asylum seekers to their home country and more sustained strategies for the disruption of people smuggling operations both in Australia and abroad. A thorough review of the efficacy of Australian processes for determining refugee status would also be timely.

xxi.   The Panel is of the strong view that there are a range of conditions that need to be fulfilled for the safe and lawful turnback of boats carrying asylum seekers. The Panel does not believe those conditions currently exist, although they could at some stage in the future, in particular if appropriate regional and bilateral arrangements are in place.

xxii. In this policy agenda designed to shift the balance of risk and incentive in favour of regular migration and against irregular options, the engagement of governments and civil society – in Australia, in our region and internationally – will become even more important. This engagement needs to embrace more comprehensive and cooperative arrangements in relation to policy development processes and the implementation of policy decisions. In addition to effective disincentives to irregular boat voyages, there needs to be greater hope and confidence that applying through the regular processes of international protection, including in source and transit countries, can work better and more quickly.

xxiii. The costs of the recommendations made in this Report are set out in Attachment 11. These costs need to be offset against savings that the Panel believes will be made from expenditures currently incurred as a result of managing the flow of unauthorised arrivals in Australia. The forward estimates presented in the 2012-13 Budget estimate such expenditure incurred by the Department of Immigration and Citizenship (DIAC) alone over the period 2011-12 to 2015-16 inclusive to be at around $5 billion assuming that arrivals remain at around the level of 450 per month from 1 July 2012. With the levels of irregular arrivals averaging over 1,300 per month since April 2012, the Panel notes that if this rate of increase were to be sustained the costs of dealing with these IMAs would likely be a significantly larger amount than the costs of the recommendations in this report.

xxiv. In the Panel's view, the recommendations in this Report will promote greater efficacy, fairness and good management in Australian policymaking on protection and asylum issues. Our recommendations will include new costs; but they will also, in our view, result in significant savings in expenditures currently being incurred.

xxv.   The need for circuit breakers, and effective follow through, in Australian and regional policymaking on the asylum seeker issue is an urgent one. Too many lives have already been lost. Too many others are in danger of being lost. Clear and sustained policymaking, in Australia and at a regional level, are required to change the balance of risk and opportunity. Such an outcome will advance Australian national interests on this issue. It will strengthen effective regional and international cooperation. It will more effectively address humanitarian needs and it will also save lives. These are the objectives to which the recommendations in this Report are directed.

SUMMARY OF RECOMMENDATIONS

Principles

Recommendation 1

The Panel recommends that the following **principles** should shape Australian policymaking on asylum seeker issues (paragraphs 2.6-2.22):

- The implementation of a strategic, comprehensive and integrated approach that establishes short, medium and long-term priorities for managing asylum and mixed migration flows across the region.
- The provision of incentives for asylum seekers to seek protection through a managed regional system.
- The facilitation of a regional cooperation and protection framework that is consistent in the processing of asylum claims, the provision of assistance while those claims are being assessed and the achievement of durable outcomes.
- The application of a 'no advantage' principle to ensure that no benefit is gained through circumventing regular migration arrangements.
- Promotion of a credible, fair and managed Australian Humanitarian Program.
- Adherence by Australia to its international obligations.

Australia's Humanitarian Program

Recommendation 2

The Panel recommends that **Australia's Humanitarian Program** be increased and refocused:

- The Humanitarian Program be immediately increased to 20,000 places per annum (paragraphs 3.3-3.8).
- Of the 20,000 places recommended for the Humanitarian Program, a minimum of 12,000 places should be allocated for the refugee component which would double the current allocation (paragraphs 3.3-3.8).
- Subject to prevailing economic circumstances, the impact of the Program increase (recommended above) and progress in achieving more effective regional cooperation arrangements, consideration be given to increasing the number of places in the Humanitarian Program to around 27,000 within five years (paragraphs 3.3-3.8).
- The Humanitarian Program be more focused on asylum seeker flows moving from source countries into South-East Asia (paragraphs 3.3-3.9).

Regional engagement

Recommendation 3

The Panel recommends that in support of the further development of a regional cooperation framework on protection and asylum systems, the Australian Government expand its relevant **capacity-building initiatives** in the region and significantly increase the allocation of resources for this purpose (paragraphs 3.26-3.28).

Recommendation 4

The Panel recommends that **bilateral cooperation on asylum seeker issues with Indonesia** be advanced as a matter of urgency, particularly in relation to:

- The allocation of an increased number of Humanitarian Program resettlement places for Indonesia (paragraphs 3.20-3.22).
- Enhanced cooperation on joint surveillance and response patrols, law enforcement and search and rescue coordination (paragraphs 3.20-3.22).
- Changes to Australian law in relation to Indonesian minors and others crewing unlawful boat voyages from Indonesia to Australia (paragraphs 3.20-3.22).

Recommendation 5

The Panel recommends that Australia continue to **develop its vitally important cooperation with Malaysia on asylum issues**, including the management of a substantial number of refugees to be taken annually from Malaysia (paragraphs 3.23-3.24).

Recommendation 6

The Panel recommends a **more effective whole-of-government strategy be developed for engaging with source countries** for asylum seekers to Australia, with a focus on a significant increase in resettlement places provided by Australia to the Middle East and Asia regions (paragraphs 3.29-3.33).

Regional processing

Recommendation 7

The Panel recommends that **legislation to support the transfer of people to regional processing arrangements be introduced into the Australian Parliament as a matter of urgency** (paragraphs 3.54 and 3.57). This legislation should require that any future designation of a country as an appropriate place for processing be achieved through **a further legislative instrument that would provide the opportunity for the Australian Parliament to allow or disallow the instrument** (paragraph 3.43).

Recommendation 8

The Panel recommends that a **capacity be established in Nauru** as soon as practical to process the claims of IMAs transferred from Australia in ways consistent with Australian and Nauruan responsibilities under international law (paragraphs 3.44-3.55).

Recommendation 9

The Panel recommends that a **capacity be established in PNG** as soon as possible to process the claims of IMAs transferred from Australia in ways consistent with the responsibilities of Australia and PNG under international law (paragraphs 3.56-3.57).

Recommendation 10

The Panel recommends that the 2011 *Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement* (Malaysia Agreement) be built on further, rather than being discarded or neglected, and that this be achieved through high-level bilateral engagement focused on strengthening safeguards and accountability as a positive basis for the Australian Parliament's reconsideration of new legislation that would be necessary (paragraphs 3.58-3.70).

Family reunion

Recommendation 11

The Panel recommends that the current backlog in the SHP be addressed as a means of **reducing the demand for family reunion through irregular and dangerous maritime voyages to Australia**, and that this be achieved through removing family reunion concessions for proposers who arrive through irregular maritime voyages – with these proposers to instead seek reunion through the family stream of the Migration Program (paragraphs 3.13-3.18).

Recommendation 12

The Panel recommends that in the **future those who arrive in Australia through irregular maritime means should not be eligible to sponsor family** under the SHP but should seek to do so within the family stream of the Migration Program (paragraph 3.71).

Other recommendations

Recommendation 13

The Panel recommends that Australia promote **more actively coordinated strategies among traditional and emerging resettlement countries** to create more opportunities for resettlement as a part of new regional cooperation arrangements (paragraphs 3.35-3.37).

Recommendation 14

The Panel recommends that the ***Migration Act 1958* be amended** so that arrival anywhere on Australia by irregular maritime means will not provide individuals with a different lawful status than those who arrive in an excised offshore place (paragraphs 3.72-3.73).

Recommendation 15

The Panel recommends that a **thorough review of refugee status determination** (RSD) would be timely and useful (paragraphs 3.74-3.76).

Recommendation 16

The Panel recommends that a more effective whole-of-government strategy be developed to negotiate better outcomes on **removals and returns** on failed asylum seekers (paragraphs 3.81-3.83).

Recommendation 17

The Panel recommends that **disruption strategies** be continued as part of any comprehensive approach to the challenges posed by people smuggling and that relevant Australian agencies be resourced with appropriate funding on a continuing basis for this purpose (paragraphs 3.84-3.86).

Recommendation 18

The Panel recommends that **law enforcement** agencies in Australia continue their activities in countering involvement of Australian residents who are engaged in funding or facilitating people smuggling operations (paragraph 3.87).

Recommendation 19

The Panel notes that **the conditions necessary for effective, lawful and safe turnback of irregular vessels carrying asylum seekers to Australia** are not currently met, but that this situation could change in the future, in particular if appropriate regional and bilateral arrangements are in place (paragraphs 3.77-3.80).

Recommendation 20

The Panel recommends that Australia continue to work with regional countries in a focused way to develop joint operational guidelines for managing **Search and Rescue (SAR)** activities in the region and to address the need for any further regional and national codification of arrangements across SAR jurisdictions (paragraphs 3.88-3.90).

Recommendation 21

The Panel recommends that, in the context of a review of the efficacy of the recommendations put forward in this Report, **the linkage between the onshore and offshore components of the Humanitarian Program be reviewed within two years.**

Recommendation 22

The Panel recommends that the incompleteness of the current evidence base on asylum issues be addressed through a **well-managed and adequately funded research program engaging government and non-government expertise** (paragraphs 3.38-3.40).

CHAPTER 1:
ASYLUM SEEKING: THE CHALLENGES AUSTRALIA FACES IN CONTEXT

1.1 The scale and complexity of international migration has increased in recent decades. Its driving forces are varied and include a range of political, economic, social and humanitarian considerations. The expansion of international migration is a product of regular national programs, international arrangements and various forms of irregular mechanisms.

1.2 Underlying the phenomenon of irregular migration to Australia is the appalling reality of the loss of many lives at sea. From late 2001 to June 2012 there have been 964 asylum seekers and crew lost at sea from known incidents concerning boats carrying asylum seekers to Australia.[1] Of these, 604 people have lost their lives since October 2009. All survivors have been deeply traumatised, some in an enduring way. Many have also suffered long term physical injuries. (Attachment 2).

1.3 In meeting the Panel's main Term of Reference to – 'provide advice and recommendations to the Government on policy options available, and in its considered opinion, the efficacy of such options, to prevent asylum seekers risking their lives on dangerous boat journeys to Australia' – this Report proposes a way forward with a view to developing a comprehensive package of policy options that will address the challenges that Australia faces over the short, medium and longer term.

1.4 These challenges include:

- effectively safeguarding the integrity of Australia's borders;

- ensuring consistency between Australian policymaking and requirements and obligations under domestic and international law;[2]

- maintaining longstanding Australian community support for the Migration and Humanitarian Programs;

- strengthening the foundations of a needs-based refugee and humanitarian program;

- continuing Australia's highly successful resettlement program;

- promoting and facilitating more effective and better coordinated regional cooperation arrangements that will improve the availability of protection for asylum seekers while their claims are being processed and deliver durable outcomes, including;

  · improved access to timely and fair processing of asylum seekers' claims for refugee status;

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1   Australian Customs and Border Protection Service and DIAC. See also Table 7 at Attachment 2,

2   See Attachment 3, 'Australia's International Legal Obligations with Respect to Refugees and Asylum Seekers'.

- safety and support while claims are being determined and subsequently, including guarantees against *refoulement* and arbitrary detention, access to education, employment and health care; and

- expanded opportunities for durable outcomes, namely voluntary repatriation when safe to do so, local integration or resettlement;

- ensuring that those who choose irregular and dangerous maritime voyages to Australia in order to seek asylum are not advantaged over those who seek asylum through regular migration pathways and established international arrangements;

- implementing more productive whole-of-government strategies in relation to the return of those who are found not to require protection;

- pursuing appropriate strategies at national and regional levels to combat people smuggling and address the appalling loss of life among people making irregular voyages to Australia;

- recognising, and anticipating, the evolution of people smuggling operations which are adaptive, entrepreneurial, networked and ruthless in exploiting market niches and policy gaps;

- developing greater cooperation between government, NGOs and civil society in meeting these challenges and implementing responses to them;

- engaging more intensively with refugee community groups in Australia which have particular connections with source countries and effective lines of communication with potential irregular asylum seekers; and

- continuing to uphold Australia's obligations under the *International Convention for the Safety of Life at Sea* (SOLAS Convention), the *International Convention on Maritime Search and Rescue* (SAR Convention) and the *United Nations Convention on the Law of the Sea* (UNCLOS).

1.5   The Panel has aimed to address its Terms of Reference in the context of these challenges for Australian policymaking and with a view to strengthening Australia's capacity to meet each of them successfully.

Global realities

1.6   The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that there are 42.5 million forcibly displaced persons worldwide.[3] They include refugees, asylum seekers and internally displaced persons (IDPs). While the total number and the proportions of each category have varied slightly, the figure has largely remained constant over the past decade.

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3   'A Year of Crises: UNHCR Global Trends 2011', *UNHCR*, viewed 26 July 2012, http://www.unhcr.org/4fd6f87f9.html.

Figure 1: Global forced displacement: 2001-2011 (millions)
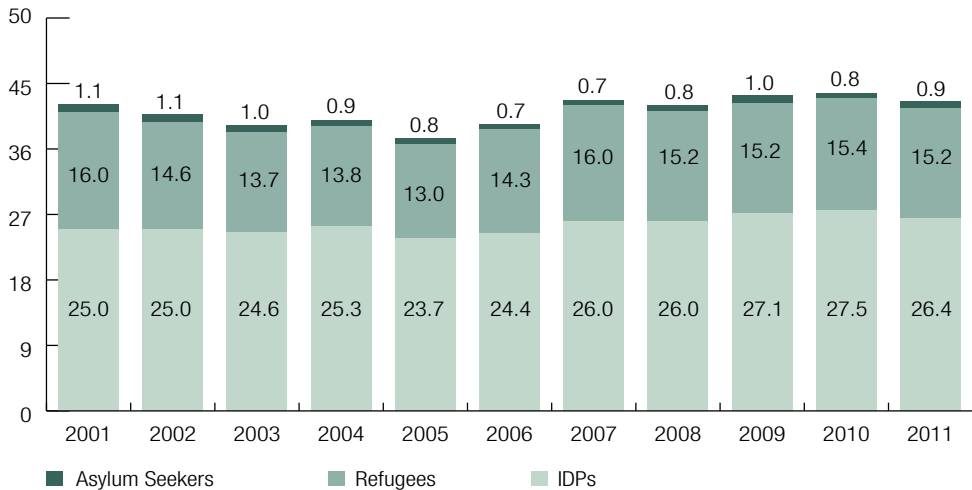
Source: UNHCR Global Trends 2011

1.7   Many of the world's refugees are in protracted situations and for longer periods than
         in the past. Developing countries such as Pakistan, Iran and Kenya host four-fifths of
         the world's refugees,[4] reflecting the fact that around 80 per cent of persons who leave
         their country of origin to seek protection remain in an adjacent country that provides
         first asylum.[5] In 2011 Pakistan was host to 1.7 million registered and around 1 million
         unregistered refugees. The Islamic Republic of Iran hosts almost 900,000 registered
         refugees.[6] These realities seriously overstretch local resources and infrastructure in
         these countries and many others, and contribute to onward movements.

1.8   Such pressures are intensifying in critical parts of the Middle East, South Asia and
         elsewhere and are likely to intensify further in the period ahead as governance and
         security arrangements in source countries for asylum-seeker flows, and in countries of
         first asylum, deteriorate.

1.9   According to UNHCR, in 2009 almost half of the world's refugees lived in cities and
         towns compared to around one-third who lived in camps.[7] Urban refugees face a range
         of legal, financial, cultural and linguistic barriers in their efforts to establish sustainable
         livelihoods. They may have freedoms and opportunities to integrate locally into the
         society but they also face a range of protection risks, including the threat of arrest and
         detention, *refoulement*, harassment, exploitation and discrimination. Urbanisation can

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4   Ibid.

5   Ibid.

6   '2012 UNHCR Country Operations Profile – Islamic Republic of Iran', *UNHCR*, 2012, viewed
       26 June 2012, http://www.unhcr.org/pages/49e486f96.html.

7   'Urban Refugees: Trying to get by in the city', *UNHCR*, viewed 26 July 2012
       http://www.unhcr.org/refworld/docid/4ab8e7f72.html.

also make it more difficult for UNHCR to identify populations in need and to provide essential services, especially to the most vulnerable.

1.10 The large number of refugees and asylum seekers in protracted unsafe situations around the world, both in camps and urban locations, create the conditions in which people smuggling can flourish.

The regional dimension in the Asia Pacific

1.11 For a variety of reasons, the number of irregular migrants is significantly understated in statistical analysis.[8] It is estimated that 30-40 per cent of all migration flows in Asia take place through irregular channels, much of it intra-regional.[9]

1.12 The Asia Pacific region currently has more than 3.6 million refugees which is around 24 per cent of the total world refugee population.[10] Furthermore, there are few signatories to the *1951 Convention on the Status of Refugees* and its *1967 Protocol* (the Refugees Convention) in the Asia Pacific region. In those states which are parties to the Refugees Convention, asylum systems are often undeveloped. The level of accession in the region to other human rights conventions is also variable. UNHCR assumes primary responsibility for processing asylum seekers in the region in the absence of appropriate national systems. The challenges it faces in doing so are compounded by a lack of resources, security considerations and the parameters in which UNHCR can operate in some countries.

1.13 Refugee determination in the Asia Pacific is complicated by mixed migration flows. There are differences between forced displacement and irregular labour migration to (and within) the region, although these issues can overlap in individual protection claims. Increasingly, the two intersect to create mixed migration flows: economic migrants, refugees and asylum seekers often travel in the same direction, using the same routes and modes of transport and facing the same risks *en route.*[11]

Australia's circumstances

1.14 The number of IMAs who have arrived in Australia in the first seven months of 2012 (7,120) has exceeded the number who arrived in total in 2011 (4,733) and 2010 (6,850). The number of IMAs in July 2012 (1,798) constitutes the largest ever monthly number and was the 'largest ever' number for the third month in a row. Passenger numbers per boat arrival have also been increasing.

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8   Irregular Migration, Migrant Smuggling, and Human Rights: Towards Coherence, *International Council on Human Rights Policy*, 2010, viewed 26 July 2012, http://www.ichrp.org/files/reports/56/122_report_en.pdf.

9   'Country Operations Fact Sheets February 2012', *UNHCR Bureau for Asia and Pacific*, viewed 3 August 2012, http://www.unhcr.org/pages/4a02d8ec6.html. See also 'Contextualising Irregular Migration', International Organization for Migration (IOM) Metropolis 2011, viewed 1 August 2012, http://www.metropolis2011.org/workshops/WS313/Metropolis_CAghazarm_Irregular Migration.ppt.

10   'A Year of Crises: UNHCR Global Trends 2011', *UNHCR*.

11   'Challenges of Irregular Migration: Addressing Mixed Migration Flows', *IOM Council Papers*, MC/INF/294, 2008.

Table 1: IMAs to Australia (by calendar year)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012 (Up to 31/7/12)	Total
Arrivals	200	3,721	2,938	5,526	2	53	15	7	61	110	179	2,850	6,850	4,733	7,120	34,635
Vessels	17	86	51	42	2	1	1	2	6	4	7	60	134	69	102	584
Country of origin																
Afghanistan	22	1,082	1,050	2,601	0	0	0	0	3	0	118	1,409	2,945	1,596	2,556	13,382
Iraq	4	1,672	1,014	2,216	0	0	0	0	0	0	20	187	603	313	262	6,291
Iran	0	71	483	308	0	0	0	0	0	0	4	97	1,208	1,595	854	4,620
Sri Lanka	7	32	30	221	0	0	0	0	0	83	16	724	537	210	1,443	3,303
Stateless*	0	9	128	46	1	0	0	0	1	0	3	173	947	359	537	2,204
Other	167	855	233	134	1	53	15	7	57	27	18	260	610	660	1,468	4,565

Source: DIAC.
* Includes Rohingya, Palestinians and Faili Kurds.

1.15   Onshore asylum figures are made up of both air and maritime arrivals. From 1 July 1998 to 27 July 2012 there were 79,498 applications for a Protection visa by persons who arrived in Australia by air and subsequently applied for a Protection visa.[12] This compares with some 33,412 boat arrivals over the same period, most of whom applied for protection.[13]

1.16   Australia received 2.5 per cent of global asylum claims in 2011, including both maritime and air arrivals.[14]

1.17   The largest number of nationalities arriving by boat to Australia in 2011-2012 were, respectively, Afghans, Iranians and Sri Lankans with these three cohorts representing 75 per cent of the total arrivals.[15] During the last peak in irregular boat arrivals in the years from 1999-2001, Afghans and Iraqis represented the largest cohorts.[16]

1.18   Australia assesses the claims of those who enter Australian territory seeking protection under the Refugees Convention and other relevant human rights conventions that contain *non-refoulement* (non-return) obligations and provides protection to those who need it.

1.19   Australia also implements its commitment to refugee protection more broadly through its longstanding Humanitarian Program that resettles refugees and persons of humanitarian concern from overseas. The Humanitarian Program which comprises both an onshore and offshore component currently stands at 13,750 places. Since 1996 it has been the policy of successive governments to link the onshore and offshore components of the Program. The basis for that approach is that it provides a limit on the overall number of visa grants, which meets budgetary requirements and allows proper planning for the provision of settlement services. For each Protection visa granted to an asylum seeker onshore, the offshore SHP component of the Program is reduced by one place.

1.20   For the first time in its 35 years of operation,[17] the 2011-12 Humanitarian Program has resulted in more onshore Protection visa grants than the total number of visas granted offshore to refugees and SHP applicants. The increase in onshore grants and consequent reduction in SHP grants (only 714 in the 2011-12 program year) is creating increasing pressures, with over 20,000 SHP applications outstanding and more than 16,000 of these being for immediate family members.[18] The vast majority of the applications for immediate family members have been proposed by former IMAs now living in Australia. (Attachment 4).

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12   See Attachment 5, Table 9, 'IMAs and air arrivals in Australia'.

13   Ibid.

14   'Fewer Asylum Claims in Australia', *UNHCR*, 18 October 2011, viewed 26 July 2012, http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=227:fewer-asylum-claims-in-australia&catid=35:news-a-media&Itemid=63.

15   See Attachment 5, Table 9, 'IMAs and air arrivals in Australia'.

16   Ibid.

17   Note that Australia has resettled refugees since 1947. The current formal Humanitarian Program was established in 1977.

18   DIAC, received 6 August 2012.

Figure 2: Asylum Applications in Selected Industrialised Countries by Calendar Year
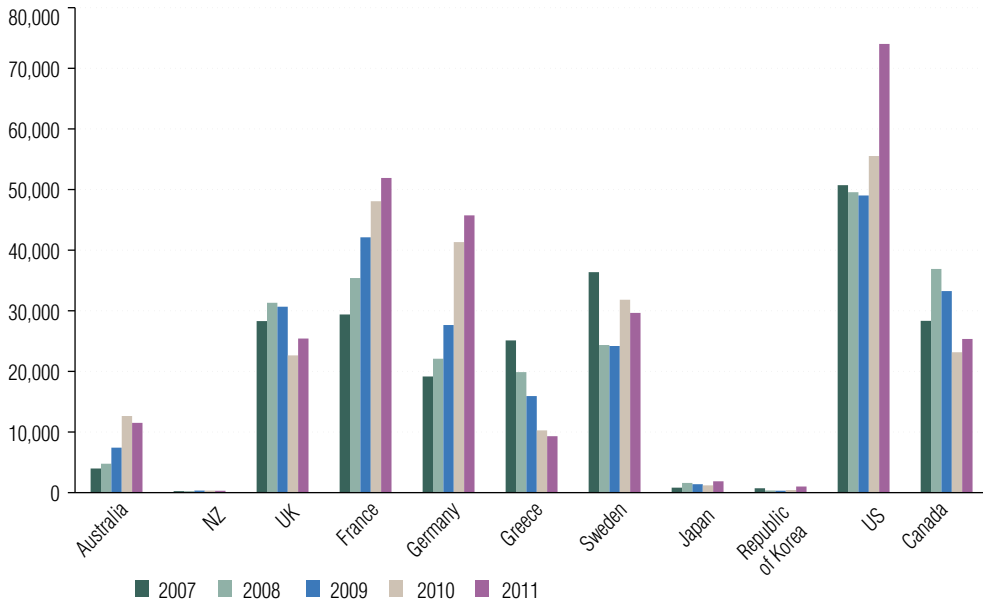
Source: UNHCR, 'Asylum Levels and Trends in Industrialized Countries', 2011.

Figure 3: Key IMA caseloads in Australia
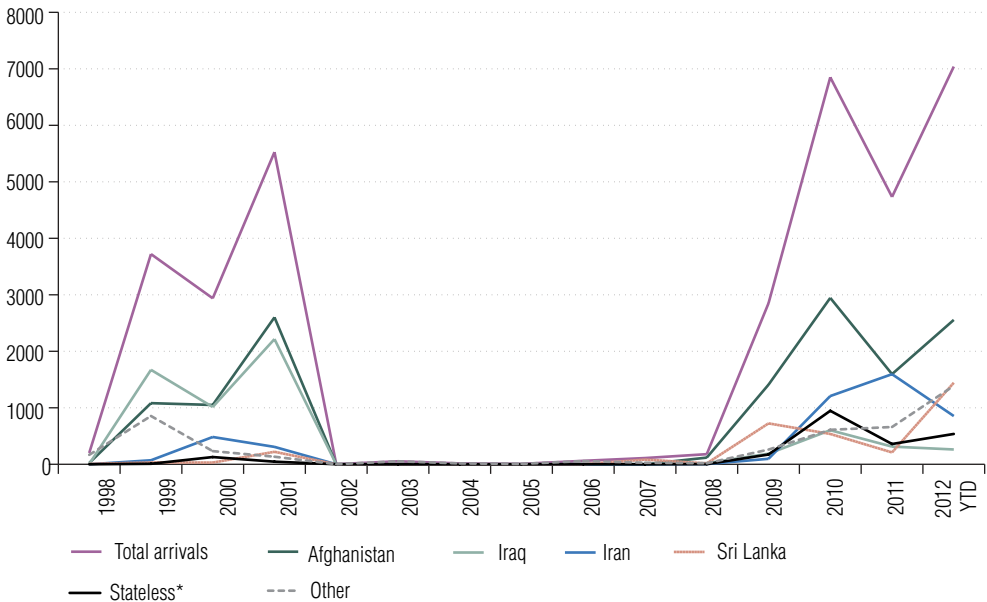
Source: DIAC, received 6 August 2012.

Table 2: Visa grants by Humanitarian Program component 1996–97 to 2011–12 (as at 6 July 2012)

Program Year	Refugee grants	SHP grants	SAC[20] grants	Sub-total offshore grants	Offshore (per cent)	Sub-total onshore grants	Onshore (per cent)	Total grants
1996–97	3,334	2,470	3,848	9,652	81.10	2,250	18.90	**11,902**
1997–98	4,010	4,636	1,821	10,467	86.80	1,588	13.20	**12,055**
1998–99	3,988	4,348	1,190	9,526	83.90	1,830	16.10	**11,356**
1999–00	3,802	3,051	649	7,502	75.30	2,458	24.70	**9,960**
2000–01	3,997	3,116	879	7,992	58.20	5,741	41.80	**13,733**
2001–02	4,105	4,197	40	8,342	67.70	3,974	32.30	**12,316**
2002–03	3,996	7,212	0	11,208	92.50	911	7.50	**12,119**
2003–04	3,851	8,912	0	12,763	93.80	840	6.20	**13,603**
2004–05	5,289	6,684	0	11,973	92.20	1,015	7.80	**12,988**
2005–06	5,699	6,739	0	12,438	89.90	1,398	10.10	**13,836**
2006–07	5,924	5,157	0	11,081	85.90	1,821	14.10	**12,902**
2007–08	5,951	4,721	0	10,672	83.20	2,153	16.80	**12,825**
2008–09	6,446	4,471	0	10,917	81.40	2,497	18.60	**13,414**
2009–10	5,988	3,234	0	9,222	67.00	4,534	33.00	**13,756**
2010–11	5,998	2,973	0	8,971	65.00	4,828	35.00	**13,799**
2011–12	6,004	714	0	6,718	48.80	7,041[1]	51.20	**13,759**

Source: DIAC, received 6 July 2012. Note: Data prior to 2001-02 is based on historical information. Data from 2001-02 onwards is fully revised and may vary from previously published figures.

'Push' and 'pull' factors

1.21 Decisions about migration are complex. Individual migrants are usually influenced by a range of 'push' and 'pull' factors when choosing pathways and destinations for migration. Some may be more immediate and more significant than others. Some relate to fear of persecution, others to economic circumstances and the search for a better life. For many Afghans leaving Afghanistan, for example, insecurity or persecution are key push factors that drive migration into neighbouring Iran or Pakistan. Having escaped immediate security threats, however, decisions about onward migration will likely take into account a broader range of factors. Individuals weigh their risks and prospects differently, but at the secondary movement stage it is more likely that migrants will consider pull factors such as stability, existing diasporas, employment or education prospects, the availability of an established refugee determination system and perceived livelihood opportunities. (Attachment 1).

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19   The SAC was a Special Assistance Category that was discontinued for new applications in 2000–01.

1.22 Those who choose to move through irregular pathways may be further influenced in their choice of destination by people smugglers, relative costs and their own assessment of whether they will be able to remain in a country permanently. Members of refugee communities indicated to the Panel that perceptions about the likelihood of successfully securing asylum in a particular country – whether this is justified in reality or otherwise – are often part of these calculations.

1.23 People who risk their lives on dangerous boat voyages to Australia to claim protection have usually factored in some assessment of this risk, although they may not be fully aware of how great it is until they have boarded a vessel. Many will also weigh this risk against the threat of return, the financial investment, the emotional commitment already invested and the likely outcome.

1.24 Currently, close to 90 per cent of all IMAs coming to Australia are successful in being granted a protection visa at either the primary or review stage. For certain cohorts the success rate has exceeded 95 per cent for particular reporting periods (see Table 3 below). Some of those with a negative outcome may receive approval following successful judicial review or be granted permanent status through the Minister personally intervening.[20] At the present time, and following the High Court's decision in November 2010[21], the majority of failed asylum seekers in Australia are seeking judicial review.

Table 3: Finally determined rates for key IMA caseloads in Australia (per cent)[22]

	2010-11	2011-12
Afghanistan	94	96
Sri Lanka	90	87
Stateless	95	90
Iraq	92	86
Iran	95	88
Avg. for all nationalities	**88**	**88**

Source: DIAC, received 6 August 2012.

1.25 While those approval rates are high, they are broadly consistent with UNHCR refugee status decision approval rates for similar caseloads in Malaysia and Indonesia.

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20 The Minister for Immigration and Citizenship has several personal powers that allow him to intervene in certain circumstances.

21 *M61/2010E v Commonwealth of Australia & Ors* and *M69 of 2010 v Commonwealth of Australia & Ors* [2010] HCA 41.

22 The finally determined rate for IMAs is a measure of the Protection visas granted to IMAs as a proportion of all decisions made on refugee status in a specified period by a departmental delegate or following merits review.

Table 4: UNHCR Refugee Status Determination (RSD) rates for 2011 in Malaysia and Indonesia

	Malaysia		Indonesia	
	No. of decisions	RSD rate (per cent)	No. of decisions	RSD rate (per cent)
Afghans	8	75	1,676	97
Iranians	92	75	275	94
Iraqis	160	100	461	89
Sri Lankans	553	24	145	98
All nationalities	16,707	90	2,890	96

Source: UNHCR 2,011 Global Trends Report.

1.26   It is fundamental to a properly functioning system of international protection that those not in need of protection, after having undergone a thorough assessment, should be able to be returned to their country of origin. While voluntary removal is preferred over involuntary removal, pursuit of the latter is often necessary as an encouragement for voluntary removal. After completion of the lengthy assessment and review processes, the removal of persons not in need of Australia's protection is proving increasingly difficult. This is partly a result of statelessness, the attitude of countries of origin, lack of cooperation from the potential returnees with travel documentation, appeals to United Nations review bodies and assessments in relation to generalised violence in the country of origin and whether the person may specifically face serious harm on return. International experience suggests that Australia is not alone in having difficulty effecting removals of failed asylum seekers although others have had some success in negotiating better performance on returns using a whole-of-government approach. (Attachment 7).

1.27   Between October 2008 and 3 August 2012 a total of 287 IMAs (not including crew on the boats) were removed from Australia. Of these, 17 were involuntary removals (refer to Table 5 below). In addition, two persons living in the community on Bridging visas returned voluntarily.

1.28   Many of the regular pathways for international protection arrangements in Australia's region are failing to provide confidence and hope among claimants for protection that their cases will be processed within a reasonable time frame and that they will be provided with a durable outcome. For too many, these factors are shifting the balance of risk and incentive away from regular migration and protection pathways towards irregular migration and dangerous boat voyages.

Table 5: Removals of IMAs from 1 July 2008 to 3 August 2012

Citizenship	IMA Removals by Citizenship									
	2008-09		2009-10		2010-11		2011-12		2012-13	
	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary
Afghanistan	0	0	0	1	0	5	0	2	0	3
Iran	0	0	0	2	0	45	0	33	0	0
Iraq	0	0	0	0	0	8	0	5	0	1
Pakistan	0	0	0	0	0	0	1	0	0	0
Sri Lanka*	0	11	15	59	0	0	0	2	0	0
Indonesia	0	2	0	60	0	0	0	0	0	0
India	0	0	0	1	0	0	0	0	0	0
Vietnam	0	0	0	0	0	20	0	8	0	1
United Kingdom#	0	0	0	1	0	0	1	0	0	0
Total	0	13	15	124	0	78	2	50	0	5
Total Onshore Removals	13		139		78		52		5	

* Two Sri Lankans were returned involuntarily to PNG.

Client was a dual Afghan/UK citizen returned to the UK.

Source: DIAC, 3 August 2012.

CHAPTER 2:
AUSTRALIAN POLICY SETTINGS: AN INTEGRATED APPROACH TOWARDS A REGIONAL COOPERATION FRAMEWORK

2.1   Australia's policy settings on protection and asylum seeker issues are not determined in isolation. They need to take account of the global and regional environment to which they relate. Their implementation depends on cooperation and the extent to which our policy settings actually advance our national interests depends significantly on the quality of that cooperation. Inevitably, and increasingly, those interests are best advanced in a sustainable way through effective cooperation with, and learning from, regional and international partners who are addressing related though not identical challenges.

2.2   A critical focus for this Report is how Australia's sovereign responsibilities for national policymaking on protection and asylum issues intersect with the imperative of a more effective framework of cooperation in our own region and internationally.

The relevance of Australia's national policy settings

2.3   In the context of IMAs coming to Australia, precise calibrations of the significance of particular Australian national policy measures are always open to debate. Assessing the specific relative weight of particular 'push' and 'pull' factors in influencing the flow of those seeking asylum in Australia on boat voyages, either now or in Australia's recent past, is more a matter of judgement than science.

2.4   Nonetheless, some conclusions of a broad kind can be made about the flow of asylum seekers by boat to Australia over the past decade. For example, 'push' factors in the period immediately after 2001, and later in the period after 2007, certainly had an impact on the flow of asylum seekers to Australia by boat. But changes in Australia's policy settings during those periods also certainly had an impact on the particular flow of asylum seekers by boat to Australia. (Attachment 1).

2.5   The absence of precision in relation to the relative importance of 'push' and 'pull' factors does not invalidate the broad conclusion that those Australian national policy settings can enhance, or diminish, the attractiveness of Australia in the context of people smuggling operations. Those policy settings can directly influence irregular maritime migration flows to Australia, even if the precise impact of the cost effectiveness and the international consequences of particular measures remain a matter of ongoing debate and subjective judgement.

The imperative of a regional cooperation plan on protection and asylum

2.6   National policy settings alone cannot resolve the challenges that currently confront Australian policymaking, and the Australian community generally, in relation to asylum seekers using dangerous irregular maritime means to claim protection. Such settings certainly cannot achieve that goal in a sustainable way over time without being coordinated with regional and source countries in a more orderly, structured and effective way.

2.7   In that context, the Regional Cooperation Framework (RCF) agreed at the *Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime* (the Bali Process), held in March 2011, provides a very productive way forward. The core principles underpinning the RCF and the guidance provided for practical arrangements developed under it are noted in Attachment 6.

2.8   A more comprehensive and sustainable regional framework for improving protection and asylum systems is a key prerequisite for creating safer alternatives to people smuggling. This will require a significant expansion of registration, processing, delivery of durable outcomes for refugees and the return of failed asylum seekers. Enhanced regional cooperation to combat people smuggling groups will also be necessary.

2.9   Australia has a potentially significant role to play in helping to resource this regional capacity building. Such resourcing should be incremental and developed in close consultation with regional governments. Particular areas of focus should include:

- consolidation of the RCF agreed during the Bali Process;
- engagement and close coordination among governments, NGOs and civil society groups on capacity-building priorities;
- increased funding for UNHCR in relation to specific programs and outcomes to improve the management and processing of asylum seekers across the wider region, including the Middle East;
- specific interaction and coordination with the Regional Support Office (RSO) recently established in Bangkok by the Bali Process to strengthen the RCF across all functional areas;
- enhanced capture and sharing of biometrics data to strengthen the integrity of the regional asylum system through the monitoring of asylum-seeker flows, support for the management of specific cases and assistance in the return of unsuccessful applicants;
- increased support for capacity-building and service-delivery programs among NGOs and civil society groups to enhance assistance for those seeking protection under regional processes;
- strengthened channels of accurate communications about the dangers of boat voyages and the safer alternatives available through regular processes;
- upgraded support for the development, where appropriate, of local integration programs in cooperation with governments, UNHCR, the International Organization for Migration (IOM) and civil society groups; and
- more effective mechanisms of regional cooperation on voluntary and involuntary returns.

2.10 Effective oversight and monitoring are critical elements of any regional approach in relation to protections, assessment, transfer, service delivery and durable outcomes. They will need to be developed as an important part of the RCF under the Bali Process and Australia will need to be actively involved in that process.

2.11 To strengthen oversight and monitoring arrangements, this Report proposes a number of particular measures (paragraphs 3.43-3.70) in relation to the recommendations made concerning facilities in Nauru, PNG and hopefully in time Malaysia.

2.12 The Panel believes it would be appropriate to bring a representative of each of these oversight and monitoring teams together at regular intervals to coordinate a shared approach on issues such as:

- consistency of operations with Australia's international obligations;

- the welfare of particular groups including unaccompanied minors (UAMs) and survivors of torture and trauma; and

- the ongoing development of regional systems in relation to protections and processing.

2.13 In the circumstances Australia now faces, what is needed is a dual and integrated response. At one level, some revision of Australian policy settings is needed and this is set out in more detail in Chapter Three. At another level, Australia needs to engage in, and help facilitate, the development of practical strategies with regional states on protections, registration, processing of asylum claims and provision of durable outcomes. Those strategies can be pursued bilaterally in the first instance, and developed over time into more regionally integrated arrangements with wider and deeper international linkages beyond the region. Proposals in relation to this evolution over time are also set out later in this Report.

2.14 The importance of developing greater regional cooperation on protection and asylum seeking enjoys broad in-principle support across the Asia Pacific region, as reflected by the broad participation in the Bali Process which includes significant Asian countries and small Pacific island nations.[23] Going beyond principle, however, to addressing how greater regional cooperation would work in practice, in the immediate and longer term, is less travelled territory but critically important.

2.15 If a more structured, orderly and genuinely linked-up framework of regional cooperation on protection and asylum seeking issues is to be actively pursued as an objective of Australian policy, certain realities need to be acknowledged.

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23 The membership of the Bali Process is Afghanistan, Australia, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, DPR Korea, Fiji, France (New Caledonia), Hong Kong Special Administrative Region (SAR), India, Indonesia, Iran, Iraq, Japan, Jordan, Kiribati, Lao PDR, Macau SAR, Malaysia, Maldives, Mongolia, Myanmar, Nauru, Nepal, New Zealand, Pakistan, Palau, PNG, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syria, Thailand, Timor-Leste, Tonga, Turkey, United States of America, Vanuatu, Viet Nam, IOM, and UNHCR. Other participating countries: Austria, Belgium, Canada, Denmark, European Commission, Finland, Germany, Italy, The Netherlands, Norway, Romania, Russian Federation, South Africa, Spain, Sweden, Switzerland, United Kingdom, United Arab Emirates. Other participating agencies: ADB, APC, ICMPD, ICRC, IFRC, IGC, ILO, Interpol, UNDP, UNODC, World Bank.

2.16   First, it is impractical for Australia to encourage and support such a regional
        cooperation framework on asylum and protection issues without an Australian national
        approach to such issues that enjoys broad-based support and the prospect of
        sustainability over time.

2.17   Second, an enhanced framework of regional cooperation on protection and asylum
        issues will not be effective if it is confined only to those countries which have signed the
        the Refugees Convention and its *1967 Protocol* or both. The fact is that the countries
        in our region with most refugees and asylum seekers within their borders, or which are
        transit routes for them, are not parties to the Refugees Convention or its Protocol (see
        Figure 4 below). The challenge of regional cooperation is to find effective mechanisms
        for responding to the realities of asylum flows in ways that include appropriate
        safeguards and practical processes that work fairly for those seeking protection.

Figure 4:   Parties to the Refugees Convention

■ Parties to either the 1951 Convention or 1967 Protocol
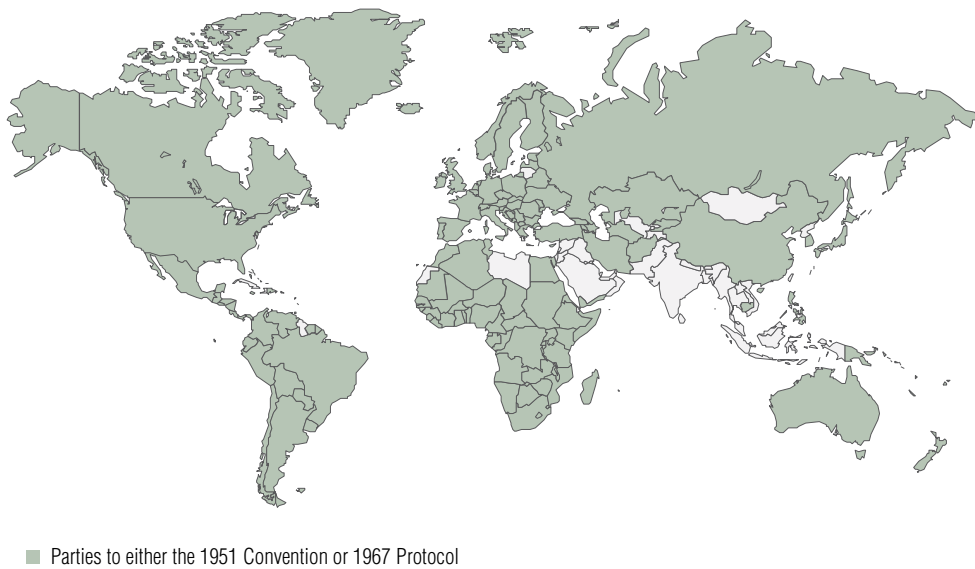
2.18   Third, a more comprehensive and practical regional cooperation framework needs to be built on common purposes among regional countries that may partly relate to protection and asylum issues in their own right, and partly to broader bilateral and regional concerns to which those issues are connected. Common purposes in this context can be bilateral, later developing into regional linkages, or they can be regional in scope from the outset.

Figure 5:   Parties to the Refugees Convention in Australia's region (including populations of concern to UNHCR)[24]

- ■ Refugees
- ■ Asylum seekers
- ■ IDPs and other persons of concern
- ■ Countries party to the Refugees Convention
- □ Countries not party to the Refugees Convention
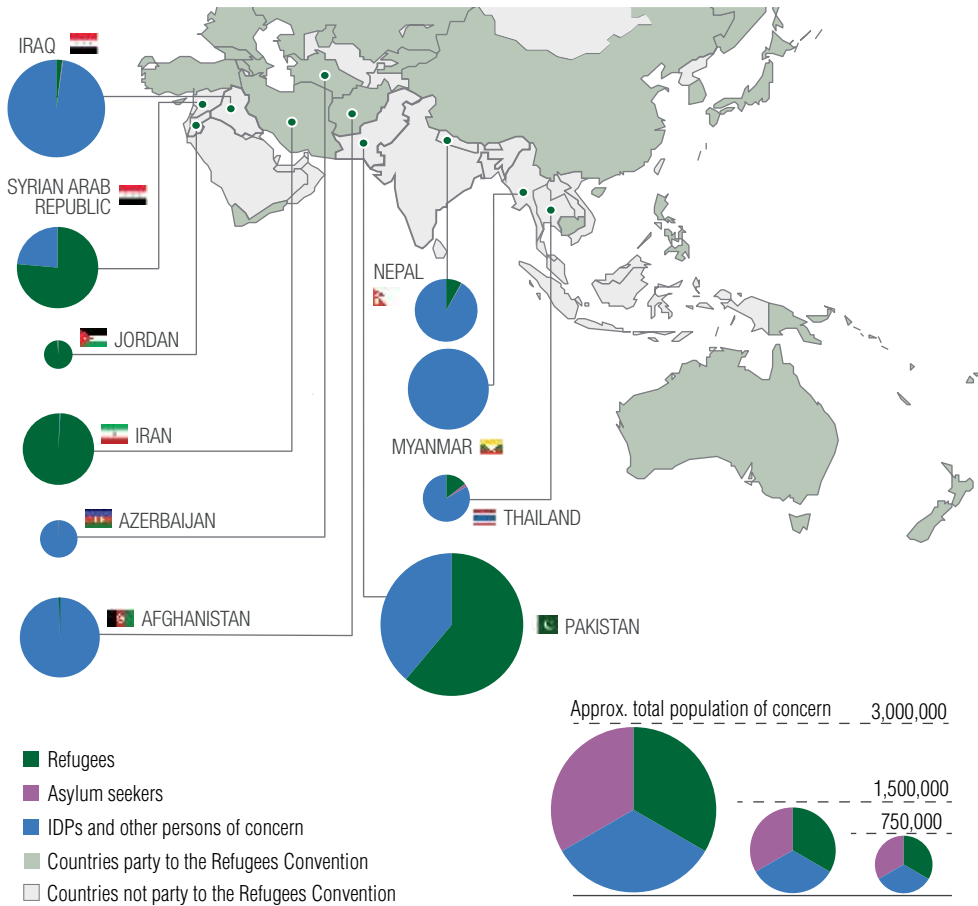
2.19   Fourth, a regional cooperation framework on protection and asylum issues will be most effective if it engages genuine interaction in policy development and implementation among governments, international organisations (particularly UNHCR and IOM), NGOs and civil society groups.

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24   UNHCR Global Trends 2011

2.20 Fifth, such enhanced regional cooperation includes short-term goals and longer-term aspirations. Both are directed in an overall sense to strengthening common standards and procedures to address irregular people movement, and in particular to ensure appropriate protections and standards of treatment, provide for credible and consistent RSD, and arrange durable outcomes for refugees and return for those who can go back to their country of origin.

2.21 And sixth, a strengthened regional approach will not be effective, or its benefits will be reduced, if those who choose to seek asylum through irregular means gain advantage from doing so over those who claim asylum through established mechanisms.

2.22 These fundamental realities, and the urgent need to build on the progress made to date in the Bali Process, underpin proposals for an enhanced regional cooperation framework on protection and asylum seeking in this Report.

CHAPTER 3:
AN AUSTRALIAN POLICY AGENDA

3.1   The dual approach which the Panel advocates is based on adjustments to Australia's national policy settings and enhanced regional cooperation arrangements. It is an approach that needs to be pursued in an integrated way. The common and principal focus of activity at both levels must be to shift the balance of risk, predictability and incentive in favour of the use of regular pathways of international protection and migration, and against the need to resort to irregular and dangerous boat voyages to Australia for those purposes.

3.2   This recalibration of Australian policy settings within a more integrated regional framework needs to be implemented in a way that is clear, sustainable over time, phased and contingent on developments. This approach demands two key priorities – one focused on incentives to use regular processes and pathways, and the other directed to disincentives to use irregular and dangerous maritime options. The Panel considers that a more strategic approach to managing the flow of asylum seekers in the region and the creation of a pathway to sustainable, regular and reliable processes towards migration alternatives need to be complemented by strengthening measures focused on discouraging irregular travel to Australia's borders.

Part A: Proposed changes to Australian policy settings to encourage use of regular pathways for international protection and established migration programs

Enhancing and refocusing Australia's Humanitarian Program

3.3   The Humanitarian Program is a significant contribution to meeting Australia's international obligations by offering protection to asylum seekers who are found to be refugees under the Refugees Convention. By offering a world-class resettlement scheme to refugees from overseas, Australia goes beyond those obligations outlined in the Convention.

3.4   Australia started taking refugees from Europe in the period immediately after the Second World War. In subsequent decades when a more formalised Humanitarian Program was established it continued to focus on resettlement from offshore. Currently, this focus has been distorted because of the high numbers of onshore arrivals claiming asylum. As noted above (paragraph 1.20), in Australia's 2011-12 Humanitarian Program the number of people granted a Protection visa in Australia was, for the first time, higher than the number of people resettled in Australia from overseas.

Figure 6:   Australia's Humanitarian Program
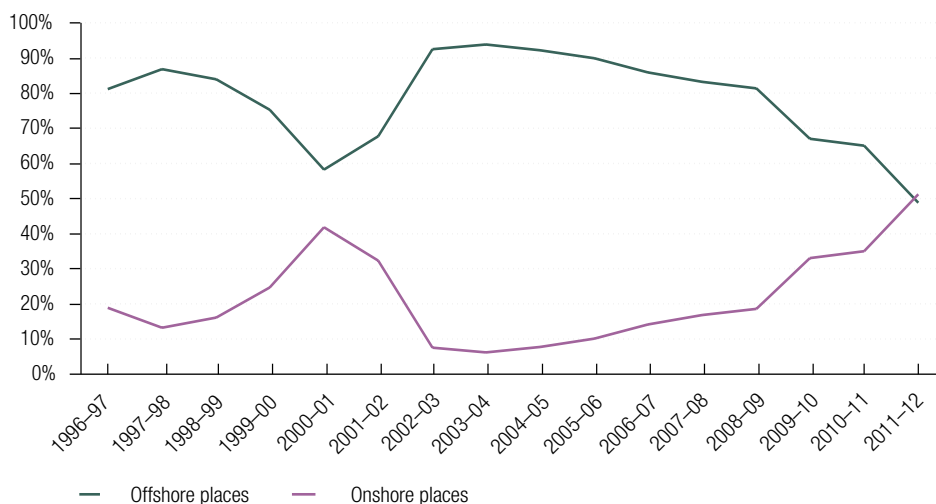
Source: DIAC, received 6 July 2012.

3.5   At the same time pressures are increasing on countries hosting refugee and asylum seeker populations for long periods of time. While the resettlement base of countries expanded to 26 in 2011, the number of resettlement places offered has largely been constant at around 80,000 places over a number of years. Currently, at best, only one in 10 persons in need of resettlement will be provided with that outcome annually.[25]

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25   Ibid.

3.6 As already noted there is also a large backlog of applications in the SHP component of the Humanitarian Program, which will not be cleared for many years.

3.7 In the Panel's view, Australia needs a substantially increased and more regionally focused Humanitarian Program while still maintaining capacity to respond to other regions of concern to Australia and UNHCR such as Africa. Such an initiative would serve Australian national interests as well as our international engagement. It would enhance the scope of our cooperation with regional partners. It would give greater hope and confidence to asylum seekers in the region that regular migration pathways and international protection arrangements provide a practical, realistic and better alternative to dangerous boat voyages to Australia. It would enable Australia to assist in meeting growing humanitarian needs in our region in a fair and timely way. It would support Australian strategies to encourage other international resettlement countries to assist in more expansive ways. A substantially increased and more regionally focused Humanitarian Program would also contribute importantly to the strengthening of regional cooperation on asylum issues.

3.8 The Panel considers that the Humanitarian Program should be immediately increased from its current level of 13,750 places to 20,000 places. At least 12,000 places should be for the refugee component which would double the current allocation for refugees within the Humanitarian Program. If the new policy directions recommended in this Report are effective in reducing the number of IMAs, the Humanitarian Program should be progressively further increased to 27,000 places within five years. Consideration of such an increase would need to take account of Australia's prevailing economic circumstances, the impact of the earlier Program increase and progress in achieving more effective regional cooperation arrangements.

3.9 The increased resettlement program should maintain the current allocation targeting need (as identified by UNHCR) for resettlement places from the Africa region, with additional places from the Middle East and Asia regions. While providing a program of up to 3,800 resettlement places from regional countries in South-East Asia, there should also be a deliberate strategy to target the majority of additional places as close to countries of origin as possible. This would involve a significant increase in places for the Middle East region. Some places should also be made available for other caseloads such as Sri Lankans, Iranians and Iraqis. Any increase in places under the Humanitarian Program should also be complemented by the normal provision for Australia's world-class settlement services.

3.10 The Panel notes that there will be costs associated with increasing the number of places in the Humanitarian Program (Attachment 11). However, as part of a comprehensive package, these costs should be seen in the context of likely operational and capital cost increases if the current number of asylum arrivals continue or increase further and, in particular, the costs of onshore detention in remote areas and asylum processing expenses. The recommendations in this Report are designed to reduce IMAs as well as the costs associated with their processing and protection.

3.11 An enhanced Humanitarian Program should utilise new opportunities for private and community sponsorship on which the Minister for Immigration and Citizenship has recently sought public submissions.[26] The Canadian Government has operated a Private Sponsorship of Refugees (PSR) Program since 1978, with more than 200,000 people migrating to Canada under the Program. The Canadian Government has set an admissions target of around 5,500 people under the PSR Program in 2012. This equates to more than 40 per cent of Canada's total 2012 refugee resettlement quota of 13,000.

3.12 Private and community sponsorship within Australia's Humanitarian Program could provide some important opportunities to assist with its expansion in a productive, cost-effective and community-based way. It is important that the private and community sponsorship arrangements be responsibly utilised to their full potential. The Panel expects that it may be possible to develop a sponsorship model that reduces the costs of a place under the Humanitarian Program by up to one-third and considers that any savings achieved through such an initiative should be used to offset other costs under the expanded program.

Family reunion arrangements

3.13 As already noted, there is a large backlog of applications in the SHP component of the Humanitarian Program which will not be cleared for many years under existing arrangements. In 2011-12, the SHP provided for only 714 family reunion[27] places to accommodate the more than 20,000 applications for such places. The provision for SHP places in 2012-13 is likely to be significantly less than this figure. With long delays in family reunion that could exceed twenty years, the Panel considers that this backlog increases the incentive for irregular movement of family members. It is also creating considerable distress amongst refugee communities in Australia who were resettled through the offshore component of the Humanitarian Program, but who as a consequence of the SHP backlog no longer have practical prospects of family reunion.

3.14 The backlog cannot be addressed through a single initiative or in a single year. Furthermore, eliminating the existing backlog of applications will not provide an enduring resolution of this situation as there will be a continuing flow of SHP applicants into the future.

3.15 The Panel notes the current policy concession that presumes that immediate family applicants meet the 'compelling reasons' criteria for resettlement under the SHP. The Panel believes that this concession should be removed for applicants currently in the backlog whose proposers have arrived in Australia through irregular maritime voyages unless the proposer was under the age of 18 at the time the SHP application was lodged. Applicants who are now likely to be unsuccessful under the SHP can seek family

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26   'Australia's Humanitarian Program: Proposed Pilot of a Private/Community Refugee Sponsorship Program', *DIAC*, viewed 2 August 2012, http://www.immi.gov.au/about/contracts-tenders-submissions/humanitarian-program.htm.

27   'Delivering on our Humanitarian Commitment', *Minister for Immigration and Citizenship*, 19 July 2012, viewed 3 August 2012, http://www.minister.immi.gov.au/media/cb/2012/cb188299.htm.

reunion under the existing provisions of the family stream within the overall Migration Program (see paragraph 3.18 on additional places for the family stream of the Migration Program). Current policy settings should continue for applicants in the backlog who have sponsors who arrived in Australia through regular migration pathways.

3.16   The Panel also recommends that the ability of any future IMA to propose family members through the SHP should be removed. IMAs seeking to bring family to Australia will need to seek to do so under the existing family stream of the Migration Program. This change would be consistent with creating a fair regional processing arrangement in which advantage is not obtained through participation in irregular migration. It also creates an additional incentive for potential IMAs to seek protection earlier and closer to their country of origin under the enhanced regional arrangements.

3.17   This policy change will not just amount to shifting the SHP backlog into another category (the family stream of the Migration Program). There are additional costs in the stream such as the visa application charge which will need to be met by the sponsor in Australia. The Panel recommends that possibilities for private sponsorship arrangements for humanitarian visa holders seeking to sponsor through the family stream should also be explored.

3.18   In recognition that these changes will place pressure on the family stream, the Panel recommends that 4,000 additional places be provided to that stream per annum. These should be specifically allocated to humanitarian visa holders. This will minimise any impact on non-humanitarian visa holder sponsors in the family stream. Provision of an additional 4,000 places per annum would need to be reviewed in the light of expected decreases in the number of IMAs when the measures recommended in this Report are implemented. Details of the proposed new arrangements are at Attachment 9.

Specific initiatives with key regional countries

3.19   Encouraging the use of regular pathways for protection and resettlement over dangerous and irregular ones necessitates enhanced and sustained engagement with key regional countries. This needs to be pursued in a variety of ways but with special focus on the Bali Process, and in particular on consolidating the 2011 RCF. Bilateral cooperation with Bali Process partners also needs to be a central focus for Australian policymaking. As major transit countries, and in Malaysia's case, as a major host country, both Malaysia and Indonesia are key bilateral partners with Australia. This bilateral dimension of a more productive and coordinated regional framework needs to be pursued actively and sustained over time at the highest levels of Australian leadership and diplomacy. (Attachment 6).

Indonesia

3.20   Indonesia is a key strategic partner for Australia across a wide range of shared interests. Vital and expanding areas of bilateral cooperation have been established over the past decade in trade and investment, in security and defence matters, in economic development, in disaster relief, in counter-terrorism activities and in many other areas. Significantly, Indonesia and Australia work together cooperatively as Co-Chairs of the Bali Process.

3.21 The *2010 Australia-Indonesia Implementation Framework for Cooperation on People Smuggling and Trafficking in Persons* now provides a useful focal point for pursuing a broader partnership on issues relating to people trafficking, protection claims, people smuggling and asylum seekers in ways that address the particular interests of both countries. But a more intensive and dynamic approach is needed in current circumstances.

Figure 7: Total number of asylum seekers and refugees registered with UNHCR in Indonesia since 2003[28]
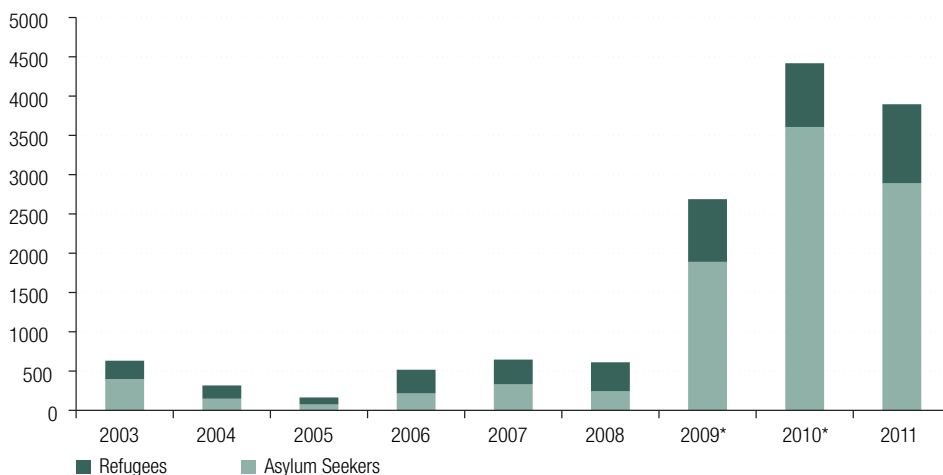
* The rise in 2009 and 2010 reflects a significant increase in claims from people from Afghanistan

3.22 In the Panel's view, the following areas of bilateral cooperation with Indonesia should be pursued as a matter of priority:

- In the context of the proposed increase in Australia's Humanitarian Program (paragraphs 3.3-3.12), particular arrangements for a substantial increase in additional places from Indonesia will be negotiated in consultation with the Indonesian Government and UNHCR. The scope of further increases in such resettlement places from Indonesia should be determined annually in consultation with the Indonesian Government.

- More extensive maritime cooperation between Australia and Indonesia should be developed across a range of activities, including cooperative patrols and joint surveillance patrols, collaborative search and rescue operations, information exchanges and exercises.

- The close bilateral cooperation on law enforcement and intelligence exchanges in relation to people smuggling activities should be further consolidated, broadened and resourced along lines similar to the other bilateral programs currently underway.

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28 'Refugee and Asylum Populations in Indonesia', *UNHCR* Statistical Online Population Database, viewed on 31 July 2012, http://www.unhcr.org/pages/4a013eb06.html..

- Changes to Australian law in relation to Indonesian minors and others crewing unlawful boat voyages from Indonesia to Australia should be pursued with options including crew members being dealt with in Australian courts with their sentences to be served in Indonesia, discretion being restored to Australian courts in relation to sentencing, or returning those crews to the jurisdiction of Indonesia.

- A practical agenda of initiatives should be developed between Australia and Indonesia to be pursued under the auspices of the RCF established under the Bali Process and in liaison with the newly established RSO.

- The capacity for assisting Indonesia with the impact of people trafficking across its borders should also be actively pursued.

- Ways in which the Association of Southeast Asian Nations (ASEAN) could enhance such a regional framework on asylum issues should be explored with Indonesia.

Malaysia

3.23 Malaysia is another key regional country in relation to protection claims, people smuggling and asylum seekers. In 2011 it hosted a refugee and asylum-seeker population of over 100,000 including 85,700 refugees and 17,300 asylum seekers in addition to a very large number of irregular migrants who are attracted to work opportunities in Malaysia. Strong and expanding cooperation between Australia and Malaysia on such issues advances shared interests in both countries, and can provide another important building block in terms of a deeper and broader framework of regional cooperation.

Figure 8: Total number of asylum seekers and refugees registered with UNHCR in Malaysia since 2003[29]
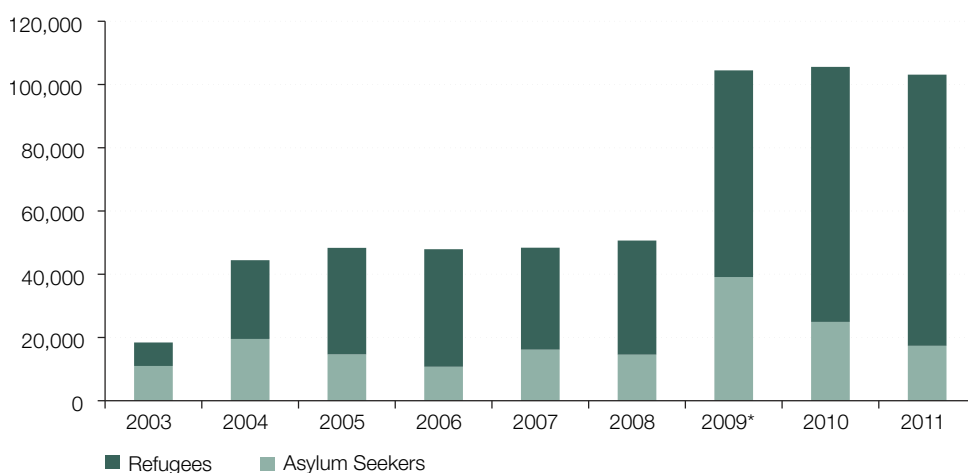
* The rise in 2009 reflects a sharp increase in claims from people from Myanmar.

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29   'Refugee and Asylum Populations in Malaysia', *UNHCR*.

3.24 In July 2011, the Australian Government announced it had entered into an agreement with Malaysia on a new arrangement to help address people smuggling and irregular migration in the Asia Pacific region (the Malaysia Arrangement). Following a decision by the High Court of Australia in August 2011[30] and a subsequent impasse in the Australian Parliament on amendments to the *Migration Act 1958* relating to the Malaysia Arrangement, the Arrangement has only been partially implemented, with Australia meeting its commitment to increase resettlement from Malaysia. In the context of the proposed increase in resettlement places under the Humanitarian Program (paragraphs 3.3-3.12), the Panel considers that resettlement should be actively managed to ensure a substantial number of refugees are taken from Malaysia each year.

3.25 Issues in relation to the future of the Malaysia Arrangement are addressed later in the Report (paragraphs 3.58-3.70).

Expansion of capacity-building measures to facilitate safe and sustainable alternatives to irregular migration

3.26 A capacity-building agenda to underpin the practical development of regional registration, processing and resettlement arrangements for those seeking protection needs to be implemented in a phased and incremental way. It would require significant and sustained resourcing. It would entail detailed negotiations with UNHCR and regional governments on a range of in-principle and implementation issues. And it would potentially involve the need for legislative changes in some partner countries. There are, however, some other aspects of this agenda that could be implemented immediately or over the short term. As a whole, the agenda would enhance protections, encourage the use of established regular protection and migration processes, broaden local engagement in those processes and diversify effective sources of accurate information to those contemplating dangerous boat voyages.

3.27 Enhanced regional capacity building to address refugee and asylum-seeker flows will require new forms of cooperation among regional countries. Australia's role in this context would be critical in terms of enabling and facilitating bilateral and regional outcomes. In 2011-12, DIAC was allocated approximately $70 million from the Australian aid program for international engagement and capacity-building activities related to people smuggling and border control. Those activities included support for regional cooperation and capacity building in regional and source countries ($47 million); management and care of irregular immigrants in Indonesia ($10 million); initiatives in relation to displaced persons in source and transit countries, and sustainable returns ($7 million); and returns and reintegration assistance packages ($7 million).

3.28 In the context of accelerating the development of a regional cooperation framework, we believe that Australia needs to diversify its capacity-building initiatives and significantly increase its allocation of resources. The Panel recommends the current level of expenditure should be doubled and focused on programs in support of building the regional framework for improved protections, registration, processing, integration, resettlement, returns and other priorities. This funding increase should come from Australia's aid program and be jointly managed by DIAC and the Australian Agency for International Development (AusAID).

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30 *Plaintiff M70/2011 v MIAC; Plaintiff M106/2011 v MIAC* [2011] HCA 32.

New strategies in source countries

3.29 Addressing the root causes of displacement in countries of origin for refugees and building more effective protections in neighbouring countries of first asylum is a critical, ongoing and long-term challenge for the international community.

3.30 The overwhelming majority of refugees and asylum seekers do not move beyond countries adjacent to their own. Those asylum seekers and refugees who do move more widely are frequently motivated by low levels of security and opportunity in the neighbouring countries. Those contemplating irregular routes and the use of people smugglers need to know the dangers involved and the alternatives to them. The best opportunity to influence the decision making of those asylum seekers is as close to their home countries as possible. Once they have made a significant financial investment and emotional commitment in pursuing an irregular migration path to Australia, it becomes very difficult to counteract their goal of completing their journey by whatever means.

3.31 This Report has proposed a significant enhancement to Australia's Humanitarian Program (paragraphs 3.3 to 3.12). A significant number of these increased resettlement places would be allocated to countries of first asylum that are sources of asylum seeker flows to Australia.

3.32 It is vital that the international community focus productively on how it can maximise the protections that are available and how they can be expanded in countries of first asylum and secondary movement. This requires the creation of improved 'protection space' – a safe and stable environment until a durable outcome can be delivered, including:

- promotion of an effective international aid effort in support of displaced populations that is strategic and sustained;

- provision of greater access (usually under the auspices of UNHCR) to orderly pathways for asylum through consistent RSD and provision of durable outcomes close to the source country;

- provision of increased resettlement opportunities focused on the highest priority groups;

- cooperation on the return of failed asylum seekers who do not need international protection; and

- disruption of people smugglers through effective law enforcement and intelligence cooperation.

3.33 As a major refugee resettlement country, Australia's national and regional interests are served by a proactive approach on these strategies in source countries. This approach should be coordinated with the initiatives outlined in paragraph 3.28 above.

Better coordination of the Humanitarian Program with other elements of Australia's Migration Program

3.34   There is scope for more effective integration of the Humanitarian Program within the broader Australian Migration Program. Some applicants for protection may have skills and qualifications that make them eligible for entry to Australia through channels other than the Humanitarian Program. This could enable others without those skills and qualifications, but with a recognised need for protection, to access one of the available places in the Humanitarian Program. The Panel recognises, however, that the numbers of potential irregular migrants able to satisfy the criteria for a skilled migration visa is likely to be small.

Active engagement with resettlement countries

3.35   Greater cooperation through a regional framework should be supported not only through enhanced resettlement by Australia but on the part of other resettlement countries as well.

3.36   The scale of current and prospective asylum-seeker flows from the Middle East, South Asia and elsewhere is a large and growing problem. Appropriate national policy settings and a more effective regional cooperation framework are necessary, but not sufficient, responses. They need to be complemented by more active and better coordinated strategies among traditional resettlement countries – particularly those in Europe, the United States, Canada and New Zealand – as well as emerging resettlement countries to create more opportunities for resettlement from the region.

3.37   This is a complex challenge and responses will need to be sustained over time. But it is one on which Australia can, and should, take a lead.

Establishing an evidence base for future policy development

3.38   The Panel notes that the evidence on the drivers and impacts of forced migration is incomplete, and more intuitive than factual. As a result, the policymaking process is forced to rely on partial and largely qualitative information, rather than a solid base of measurement and analysis. Addressing this gap in evidence and knowledge is a priority.

3.39   A well-managed and appropriately funded research program should support the development of sustainable, evidence-based policy approaches aimed at meeting Australia's obligations to manage its borders and provide protection to refugees. It is envisaged that, among other things, the program would focus on the drivers and determinants of irregular migration, including why people decide to leave their home countries, how they travel between source, transit and destination countries, and the irregular and regular migration pathways used by asylum seekers.

3.40   The Panel recommends that at least $3 million each year (to be reviewed after two years) of new policy funding should be allocated to establish a significant, ongoing research program that will develop a more robust evidence base on irregular migration and asylum. The program should be developed in partnership with academic and other expertise in the field. It should managed by a board comprised of academics with expertise in migration matters, NGOs and senior government officials.

Part B: Measures to discourage the use of irregular maritime travel to Australia

3.41 A range of disincentives is set out in this Report to actively discourage irregular and dangerous maritime voyages to Australia for the purposes of claiming protection or seeking asylum. The purpose of these disincentives, which are consistent with Australia's international obligations, is not to 'punish' those in search of such protection or asylum. It is to ensure that IMAs to Australia do not gain advantage over others who also claim protection and seek asylum but who do so through enhanced regional and international arrangements and through regular Australian migration pathways.

3.42 One of the goals of enhanced regional cooperation on asylum seeking is that, over time, those choosing to claim protection by travelling to Australia on irregular maritime voyages should have their claims processed through regionally integrated arrangements. Those arrangements would entail protections, decision making, review processes and durable outcomes in close consultation with UNHCR. Where resettlement is the appropriate durable outcome for an individual, it would be provided on a prioritised basis across the region. These are practical objectives to which a regional cooperation framework should be directed, and which Australia and other regional countries should pursue as a matter of urgency.

3.43 To support such processing within the development of a comprehensive regional cooperation framework, the Panel believes that the Australian Parliament should agree, as a matter of urgency, to legislation that would allow for the processing of irregular maritime arrivals in locations outside Australia. That legislation should also reserve to the Parliament the provision to allow or disallow the legislative instrument that would authorise particular arrangements in specific locations outside Australia.

Processing of protection claims of IMAs in Nauru

3.44 While some key aspects of a more integrated regional framework on asylum seeking can occur relatively quickly, others will take time to be established. In the intervening period, Australia's current circumstances call for more immediate measures. In this context and in coordination with the Nauruan Government, appropriate facilities and services should be established in Nauru as soon as practical for the processing of claims made by IMAs to Australia and for their living arrangements while they await a durable outcome.

3.45 The Panel's view is that, in the short term, the establishment of processing facilities in Nauru as soon as practical is a necessary circuit breaker to the current surge in irregular migration to Australia. It is also an important measure to diminish the prospect of further loss of life at sea. Over time, further development of such facilities in Nauru would need to take account of the ongoing flow of IMAs to Australia and progress towards the goal of an integrated regional framework for the processing of asylum claims.

3.46 Asylum seekers who have their claims processed in Nauru would be provided with protection and welfare arrangements consistent with Australian and Nauruan responsibilities under international law, including the Refugees Convention. Those protections and welfare arrangements would include:

- treatment consistent with human rights standards (including no arbitrary detention);
- appropriate accommodation;
- appropriate physical and mental health services;
- access to educational and vocational training programs;
- application assistance during the preparation of asylum claims;
- an appeal mechanism against negative decisions on asylum applications that would enable merits review by more senior officials and NGO representatives with specific expertise;
- monitoring of care and protection arrangements by a representative group drawn from government and civil society in Australia and Nauru; and
- providing case management assistance to individual applicants being processed in Nauru.

3.47 Those IMAs transferred to Nauru may choose to return voluntarily to their home country. In such circumstances, this voluntary return could be facilitated through appropriate arrangements including Australian assistance with reintegration.

3.48 There should be provision for IMAs in Nauru who are determined to have special needs, or to be highly vulnerable, or who need to be moved for other particular reasons, to be transferred to Australia. The Panel recommends that such IMAs come to Australia on a temporary visa. Their conditions and entitlements during this period in Australia would be similar to those that apply to persons currently being processed on a bridging visa. Such arrangements would continue to apply for the period until their application for protection has been fully processed in Nauru and a durable outcome provided.

3.49 Other IMAs not in need of moving to Australia would remain in Nauru until their refugee status is determined and resettlement options are finalised.

3.50 Irrespective of whether IMAs stay in Nauru for the period of their status determination or are moved to Australia, the same principle would apply to all. Their position in relation to refugee status and resettlement would not be advantaged over what it would have been had they availed themselves of assessment by UNHCR within the regional processing arrangement.

3.51 Decisions in relation to how IMAs in Nauru would be processed would be determined by Australian officials in accordance with international obligations and in the context of prevailing circumstances.

3.52 The involvement of UNHCR and IOM with registrations, processing and resettlement and/or returns in Nauru and other regional processing centres would be highly desirable and should be actively pursued as a matter of urgency. NGOs and civil society groups should also be productively engaged in specific aspects of welfare and service delivery.

3.53 For those asylum seekers in Nauru who are found to be refugees, resettlement options should be explored with UNHCR and other resettlement countries. If such refugees require resettlement in Australia, this would be provided at a time comparable to what would have been made available had their claims been assessed through regional processing arrangements.

3.54 In the context of recent High Court decisions, the Panel considers that any future arrangements for processing of protection claims in Nauru as part of a regional cooperation framework should be implemented with new legislative authority from the Australian Parliament (Attachment 10).

3.55 Consistent with the objectives outlined above, the Panel recommends that as a matter of urgency the Australian Government commence negotiations with the Nauruan Government to identify a suitable location for the establishment of a facility of sufficient capacity to host IMAs to Australia for the short term.

A processing facility in PNG

3.56 In the Panel's view, in addition to Nauru, similar arrangements also need to be put in place elsewhere in the region to address the rising number of IMAs to Australia. The PNG Government has facilitated such arrangements in the past and entered into a Memorandum of Understanding (MOU) with Australia on 19 August 2011 for the processing of asylum claims of IMAs at an assessment centre on Manus Island. It would be a matter of negotiation with PNG whether Manus Island remains its preferred location for such a facility or whether other options would be relevant.

3.57 If a processing centre for asylum claims were to be re-established in PNG, similar arrangements to those proposed in this Report in relation to Nauru (paragraphs 3.43 to 3.55) would need to be negotiated with the PNG Government. Furthermore, relevant new legislative authority would need to be passed by the Australian Parliament.

Next Steps on the Malaysia Arrangement

3.58 On 25 July 2011 the Australian Prime Minister and the Minister for Immigration and Citizenship announced the Malaysia Arrangement had been signed by Australia and Malaysia. Under the Arrangement, Malaysia agreed to accept 800 'transferees' (people who have travelled irregularly by sea to Australia or who had been intercepted at sea by Australian authorities while trying to reach Australia by irregular means) and Australia agreed to resettle 4,000 refugees currently residing in Malaysia over a four year period at a rate of approximately 1,000 per year. The Arrangement also set out a number of commitments by the Governments of Australia and Malaysia in relation to protection, welfare and processing arrangements for transferees. (Attachment 8).

3.59 Protections in the Arrangement and its Operational Guidelines include:

- pre-screening assessments in accordance with international standards prior to transfer to Malaysia;

- registration by UNHCR of transferees seeking asylum;

- appropriate consideration of transferees' claims for asylum by UNHCR;

- lawful residence for transferees in Malaysia during consideration of their asylum claims;

- guidance to law enforcement agencies and other relevant authorities in Malaysia in relation to the protections afforded to transferees under the Arrangement;

- *non-refoulement* of transferees during processing and for those found to be in need of protection;

- provision of appropriate health, counselling and psychological services to transferees;

- provision of self-reliance opportunities (including employment) to transferees;

- provision of educational opportunities to transferees of school age;

- support for vulnerable transferees from UNHCR and IOM; and

- establishment of a Joint Committee and an Advisory Committee to oversee the Arrangement, both on a day-to-day basis and at a strategic level.

3.60 As a result of decisions in the High Court of Australia and an impasse in the Australian Parliament over subsequent legislation, only one part of the Malaysia Arrangement has been implemented, namely the resettlement of refugees from Malaysia to Australia as agreed. One key provision not implemented to date is the movement of the 800 transferees from Australian authorities to Malaysia.

3.61 There are concerns among a wide range of groups and individuals in Australia in relation to the protections and human rights implications of the Malaysia Arrangement. Many of those concerns have been conveyed directly to this Panel through meetings and written submissions. There are concerns that relate to the non-legally binding nature of the Arrangement, the scope of oversight and monitoring mechanisms, the adequacy of pre-transfer assessments, channels for appeal and access to independent legal advice, practical options for resettlement as well as issues of compliance with international law obligations and human rights standards (particularly in relation to *non-refoulement*, conditions in Malaysia, standards of treatment and UAMs).

3.62 The Australian Government has emphasised its clear view that the Malaysia Arrangement provides an effective disincentive to irregular maritime ventures, that it is consistent with Australia's obligations under the Refugees Convention and other human rights conventions, that the Malaysian Government is committed to implementing the Arrangement, and that UNHCR and IOM involvement in the development of the Arrangement has been critical.

3.63 In the Panel's view, the Malaysia Arrangement is an important initiative in bilateral cooperation between Australia and Malaysia on an issue of great significance for both countries and for the broader region. It also is a potential building block for a stronger framework of regional cooperation on protection and asylum claims. The Panel believes, however, that the operational aspects underpinning the current provisions in the Arrangement need to be specified in greater detail as part of a broader revision to enhance the protections for transferees that it aims to provide.

3.64 The adequacy of protections for asylum seekers set out in the Arrangement, and measures of accountability for their implementation, should be strengthened to meet a range of concerns. There should also be a commitment to working towards developing these protections further. Provisions for UAMs and for other highly vulnerable asylum seekers need to be more explicitly detailed and agreed with Malaysia. Furthermore, in relation to pre-transfer risk assessment, further specific details and safeguards will also need to be provided. Where appropriate, these provisions should be strengthened and delivered in association with relevant NGOs.

3.65 As part of ongoing discussions between both the Australian and Malaysian Governments to facilitate a positive outcome, an MOU, or comparable instrument, should be actively pursued. Such an approach could further enhance mutual accountability in the context of the Arrangement. A written agreement between Malaysia and UNHCR on implementation of the Arrangement should also be pursued as another important dimension of accountability.

3.66 The Panel recommends that a more effective monitoring mechanism be negotiated with Malaysia in relation to the protections under the Arrangement. That mechanism should involve senior officials and eminent persons from civil society in Australia and Malaysia. A monitoring mechanism of this kind could encompass in its remit the development of guidelines for the support of vulnerable transferees to Malaysia, including UAMs, and reporting on the adequacy of protections in practice through regular updates on the welfare of individuals transferred. This mechanism should be linked to the broader regional arrangements for monitoring and oversight.

3.67 It will also be important to ensure that UNHCR is properly resourced to deliver services, both to transferees and to the broader asylum seeker population in Malaysia, through enhancement of its capacity to provide core protection services, assistance to highly vulnerable individuals and support to local communities.

3.68 Initiatives along the lines of the Malaysia Arrangement are relevant to, and important in, a future framework of enhanced regional cooperation on asylum issues. This is a reality because so few countries in Australia's region are parties to the Refugees Convention and because alternative bilateral and regional forms of cooperation need to be developed in ways that provide appropriate safeguards and effective accountability.

3.69   In the Panel's view, the Malaysia Arrangement needs to be strengthened and revised in these ways as a matter of urgency and at the highest level of government. This is particularly the case in terms of the confidence it provides that its protections will be respected and implemented in practice, and that the human rights of transferees will be upheld. It is also important because it is the Panel's view that, with appropriate amendments for these purposes, the Arrangement would be able to play a vital and necessary role in supplementing the processing facilities in Nauru and PNG that are recommended elsewhere in this report.

3.70   What has been negotiated with Malaysia needs to be built on further, not discarded or neglected. In that context, innovative thinking and open mindedness on all sides will be important. The Arrangement constitutes potentially too important an initiative in bilateral and regional terms not be taken to the necessary next stage of development. It is the Panel's hope that this next stage can be achieved as soon as possible to provide a positive basis for the Australian Parliament's reconsideration of this issue.

Family reunion changes for IMAs

3.71   As discussed above (paragraphs 3.13 to 3.18), the Panel has recommended changes to the operation of the SHP in terms of who may act as a proposer for a relative overseas seeking to be reunited with family in Australia. Those changes will mean that people who in future come to Australia as IMAs and who do not seek to have their claims assessed through enhanced regional arrangements will not be able to propose their family under the SHP at any time. Any family reunion would need to occur through the family migration stream of the Migration Program. The Panel believes this change will create an additional incentive for potential IMAs to seek protection as close to their home countries as possible rather than making the dangerous journey to Australia. (Attachment 9)

Reducing risk of longer maritime voyages to Australia

3.72   The Panel considers that all possible measures should be implemented to avoid creating an incentive for IMAs taking even greater risks with their lives by seeking to reach the Australian mainland. As a complement to facilities in Nauru and PNG, the Panel recommends the Government bring forward legislative amendments to the *Migration Act 1958* so that arrival on the Australian mainland by irregular maritime means does not provide individuals with a different lawful status than those who enter at an excised offshore place, such as Christmas Island (Attachment 10).

3.73   Such an amendment will be important to ensure that introduction of processing outside Australia does not encourage asylum seekers to avoid these arrangements by attempting to enter at the Australian mainland. Such attempts would increase the existing dangers inherent in irregular maritime travel. Legislative change would ensure that all IMAs will be able to be processed outside Australia, regardless of where they first enter the country.

Review of the efficacy of Australia's processes for determining refugee status

3.74   As noted previously in the Report (paragraph 1.24), final rates of approval of refugee status for IMAs to Australia are high. These are broadly consistent with UNHCR approval rates for similar caseloads. However, there have been substantial fluctuations in approval rates across caseloads at different times. There are also a significant number of negative decisions at primary assessment which are overturned on review.

3.75   In the Panel's view, a thorough review of Australian processes for RSD, including complementary protection, would be timely and useful. Over recent years, comparable countries such as the United Kingdom and Canada have undertaken significant reform of their migration legislation and processes for the determination of refugee status, including appeal rights. It would be relevant to assess whether there are aspects of such reforms that would be relevant in Australia's circumstances.

3.76   Such a review should include within its scope:

- identity issues and the use of biometrics;

- the consequences of a refusal by applicants to cooperate in confirming their identity;

- a more expeditious assessment process to finalise RSDs;

- the quality of application advice;

- the primary decision and review processes;

- improved capacity to use intelligence material in RSDs;

- the consistency and quality of country information available to primary decision makers and at review; and

- the need for greater codification in domestic legislation of the RSD assessment and the tests and standards applied, consistent with Australia's Refugees Convention obligations.

Turnbacks

3.77   Turning back irregular maritime vessels carrying asylum seekers to Australia can be operationally achieved and can constitute an effective disincentive to such ventures, but only in circumstances where a range of operational, safety of life, diplomatic and legal conditions are met:

- The State to which the vessel is to be returned would need to consent to such a return.[31]

- Turning around a vessel outside Australia's territorial sea or contiguous zone (that is, in international waters) or 'steaming' a vessel intercepted and turned around in Australia's territorial sea or contiguous zone back through international waters could only be done under international law with the approval of the State in which the vessel is registered (the 'flag State').

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31   This may be provided through acquiescence.

- A decision to turn around a vessel would need to be made in accordance with Australian domestic law and international law, including *non-refoulement* obligations, and consider any legal responsibility Australia or operational personnel would have for the consequences to the individuals on board any vessel that was to be turned around.

- Turning around a vessel would need to be conducted consistently with Australia's obligations under the SOLAS Convention, particularly in relation to those on board the vessel, mindful also of the safety of those Australian officials or Australian Defence Force (ADF) personnel involved in any such operation.

3.78   Circumstances have changed since the limited number of turnbacks of irregular vessels carrying asylum seekers in Australia over a decade ago. The legal context has changed. The attitudes of many regional governments have evolved, raising the potential cost in terms of bilateral cooperation generally and coordination on people smuggling activities in particular. Furthermore, the pre-emptive tactics of people smugglers have adapted. Irregular vessels carrying asylum seekers can often be quickly disabled or rendered unsafe to foil any attempted turnbacks and to create a safety of life at sea situation. In addition, the potential dangers for asylum seekers and Australian personnel in effecting turnbacks have not diminished. (Attachment 8).

3.79   In implementing a turnback policy, an Australian Government would need to be mindful of the significant operational implications for the ADF. In particular, there must be a complete understanding that the Commanding Officer is best placed to assess the situation to determine if a turnback is feasible, safe and lawful. Furthermore, any implementation of the turnback policy would need to take careful account of the availability of major fleet units that would be suitable to conduct and sustain such operations.

3.80   In the Panel's view, the conditions noted above and required for effective, lawful and safe turnbacks of irregular vessels headed for Australia with asylum seekers on board are not currently met in regard to turnbacks to Indonesia. That situation may change in the future, in particular if appropriate regional and bilateral arrangements are in place. It would only do so if the conditions outlined above (paragraph 3.77) are fully met and, in particular, if there are changes in the understandings that exist with regional states and if there is clarification of what constitutes safe and lawful conduct by Australian personnel.

Removals and Returns

3.81   Between October 2008 and 3 August 2012 a total of 287 IMAs (not including crew on the boats) were removed from Australia. Only 17 of these were involuntary removals. In addition, two persons living in the community on Bridging visas returned voluntarily from the community. While voluntary removal is preferred over involuntary removal, the latter is often necessary as an encouragement for voluntary removal with reintegration packages that are commonly offered.

3.82   It is fundamental to a properly functioning system of international protection that those determined not to be in need of protection, after having undergone a thorough assessment, should be able to be returned to their country of origin. Australia has return arrangements in a place with a number of countries of origin. However, some countries of origin have indicated they will not accept involuntary and undocumented returns. International experience suggests that Australia is not alone in having difficulty effecting removals, and that a whole-of-government approach is needed to negotiate better performance on removals.

3.83   Such an approach could include taking a more holistic view of Australia's relationship with countries that refuse to readmit their nationals. It could also include securing return arrangements that provide incentives for countries to cooperate and assist with involuntary removals as well as disincentives for non-compliance. The capacity to undertake involuntary removals will encourage the voluntary return of others. A Joint Working Strategy between DIAC and Department of Foreign Affairs and Trade (DFAT) should be developed to identify means of increasing the scope for bilateral cooperation with countries that do not currently accept the involuntary return of their nationals. (Attachment 7).

Disruptions

3.84   Australia has worked successfully with local law enforcement agencies in various countries to disrupt the activities of people smuggling syndicates and specific ventures. That cooperative work has helped to moderate the inflow of irregular asylum seekers from source countries to Australia (Attachment 6).

3.85   Funding for the capabilities that support this disruption effort has been provided to Australian agencies for country-specific activities for limited periods. This has hindered the ability of agencies to operate comprehensively across all relevant countries involved, and to respond quickly and flexibly. It has also complicated the challenge for agencies in maintaining their capabilities and local relationships in the region that are critically important to effective disruption.

3.86   Disruption efforts are, and should continue to be, part of any comprehensive approach to address the challenges posed by people smuggling. Their impact is impossible to quantify with precision but they complement other strategies in a useful way. Accordingly, the relevant agencies should be resourced with sufficient funding to cover their important activities on a continuing basis.

Law enforcement in Australia

3.87   Law enforcement agencies in Australia should continue their activities in countering any involvement of Australian residents who are engaged in funding and facilitating people smuggling.

Search and Rescue (SAR)

3.88 The need for cooperation extends across the boundaries of Australia's SAR region to neighbouring countries, notably with Indonesia, PNG and the Solomon Islands.

3.89 Australia takes its SAR obligations under international and domestic law very seriously. In practice, Australia meets its responsibilities by implementing internationally agreed protocols and obligations consistent with the relevant Conventions and International Aviation and Maritime SAR Manual. This Manual provides guidelines for the implementation of the necessary infrastructure, planning and operational procedures at the domestic level and for coordination and liaison with neighbouring countries.

3.90 Coordination with neighbouring countries will be an ongoing challenge for Australian SAR authorities and it will be necessary to continue to invest in initiatives with those countries to ensure that the capacity and frameworks exist for effective liaison and cooperation. It will also be important to continue working with neighbouring countries to identify lessons learned from recent experience and to develop joint operational guidelines for managing SAR activity within the region, particularly close to boundaries of SAR responsibilities. This initiative should also identify the need for any further regional and national codification of arrangements across SAR jurisdictions.

ATTACHMENTS

ATTACHMENT 1:
THE GLOBAL AND REGIONAL CONTEXT

Migration is a global phenomenon and an enduring aspect of the human experience. Human mobility is at unprecedented levels, reflecting increasing global pressures for forced migration, as well as social and economic aspirations. The scale and complexity of international migration has increased in recent decades, accelerated by growing demographic disparities and enabled by better access to global information flows, communications and transport networks. This upwards trend in mobility is likely to continue – the estimated 214 million international migrants in the world represent only a fraction of the 700 million people who would prefer to live elsewhere permanently if they could (according to a recent two-year Gallup survey).[32]

An estimated 10-15 per cent of these international migrants are in an irregular situation.[33] People smuggling and other forms of irregular movement, such as human trafficking, have emerged to exploit the large gap that exists between the number of people wanting to migrate – because they are fleeing persecution, or for social or economic benefit – and the relatively few places made available through formal migration channels.

Ongoing global economic disparities – and individuals' growing awareness of their comparative economic circumstances – sustain strong demand for international migration, including irregular migration. High rates of unemployment, combined with higher wages offered abroad, are strong incentives for an individual to seek employment outside their own country, as is the opportunity to send remittances back to family at home. The possibility of such remittances is also a strong disincentive for some source countries to prevent large-scale irregular emigration: global remittances back to the developing world reached $372 billion in 2011.[34] But migration is not only an economic activity. It is also a response to conflict, persecution, lack of political or social freedoms, and the loss of livelihood.

Migration drivers

Migration drivers – both regular and irregular – can be broadly broken into 'push factors' in countries of origin or of first asylum, and 'pull factors' in destination countries. One factor may predominate – the need for physical safety, for example – but for most would-be migrants, decisions about where, and even when, to move are based on a combination of these factors (whether real or perceived).

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32   '700 million world wide desire to migrate permanently', *Gallup Poll and Potential Net Migration Index 2009*, 2009, viewed 27 July 2012, http://www.gallup.com/poll/124028/700-million-worldwide-desire-migrate-permanently.aspx.

33   'IOM World Migration Report 2010', *International Organization for Migration (IOM)*, 2010, viewed 30 July 2012, http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf.

34   'Remittance Flows in 2011', *World Bank Migration and Development Brief*, viewed 27 July 2012, http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationandDevelopmentBrief18.pdf.

Push factors that drive individuals out of countries of origin are usually associated with instability or violence (either generalised or specifically targeting an individual), lack of opportunity or disaster. While those forced to leave in such circumstances may have little choice about their initial destination, push and pull factors can contribute to onward movement from countries of first asylum (CFAs) or transit countries, creating new (and mixed) migration flows.[35] Pull factors are significantly more varied, and their relative attraction depends on individual circumstances and perceptions. But broadly, stability, empowerment, economic prospects, education and existing diasporas (which contribute to chain migration) attract people to developed countries.[36] How potential irregular migrants choose between destinations is less clear, but may further depend on cost comparisons, as well as their perceptions of prospects of being able to remain permanently and the opportunities and support available in each.

Onward migrants usually take a range of factors into account.[37] For those would-be migrants who choose to move beyond CFAs, and have the chance to choose their destination, the policy settings of different states may factor in that choice. For those intending to claim asylum, this may include an understanding, however basic, of how likely different countries are to accept them. Factors that inform would-be migrants' decision making can include:[38]

- the presence of relatives in the country (and possibly the ability to sponsor reunion for other family members);

- comparative livelihood and economic opportunities;

- cost of travel; and

- difficulty of travel, including documentation and physical access, as well as enforcement practices in source, transit and destination countries.

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35   Many refugees find out about potential destination countries in the West once in third countries. See 'Global Migration Perspectives no. 34: Why asylum seekers seek refuge in particular destination countries: an exploration of key determinants', *Global Commission on International Migration*, 2005, pp23-24 and p32, viewed 1 August 2012, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp34.pdf.

36   F Duvell, 'Research Report: Irregular Immigration, Economics and Politics', *CESifo DICE Report 3/2011*, 2011, viewed 2 August 2011, http://www.compas.ox.ac.uk/fileadmin/files/People/staff_publications/Duvell/1210202.pdf. See also 'Push and pull factors of international migration: a comparative report', *European Commission*, 2000, viewed 2 August 2012, http://www.nidi.knaw.nl/Content/NIDI/output/2000/eurostat-2000-theme1-pushpull.pdf.

37   'Drivers of Migration', *Migrating Out of Poverty: UK Department for International Development Working Paper 1*, 2012, viewed 2 August 2012, http://www.dfid.gov.uk/r4d/PDF/Outputs/MigratingOutOfPov/WP1_Drivers_of_Migration.pdf.

38   'Why asylum seekers seek refuge in particular destination countries: an exploration of key determinants', *Global Migration Perspectives no. 34*, Global Commission on International Migration, May 2005, pp2-3 and pp23-32, viewed 1 August 2012, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp34.pdf . See also F Barthel and E Neumayer, 'Spatial Dependence in Asylum Migration', *London School of Economics*, 2012, viewed 2 August, http://ssrn.com/abstract=2062832 or http://dx.doi.org/10.2139/ssrn.2062832.

For asylum seekers, there may be further consideration of the likelihood of permanent residency or protection in a destination country, and potentially, access to services such as healthcare, education, housing, welfare and employment.

The global situation

Today there are around 15.2 million refugees (people outside their country of origin found to be in need of international protection under the terms of the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* (Refugees Convention)) and nearly 900,000 asylum seekers (those seeking international protection who may not necessarily be found to be a refugee).[39] Of these, around 80 per cent are unable to travel beyond an adjacent country that provides initial asylum, which puts much of the refugee and asylum-seeker burden on the developing world:[40]

- On average, Afghans represent one of every four refugees in the world, with 95 per cent of them located in Pakistan and Iran.

- Pakistan hosts the largest number of refugees worldwide (around 1.7 million, with another million unregistered), followed by the Islamic Republic of Iran (around 900,000).[41]

- Of the estimated 1.6 million Iraqi asylum seekers in the world, the majority reside in neighbouring countries (around 1 million in Syria, 500,000 in Jordan, 50,000 in Iran and 30,000 in Lebanon).[42]

- South Africa and Kenya each host refugee numbers in the hundreds of thousands. The city of Dadaab in north-eastern Kenya hosts the largest refugee complex in the world, housing more than 559,000 registered refugees and several thousand more asylum seekers who are unregistered.[43]

39   'Year of Crises: UNHCR Global Trends 2011', *UNHCR*, 2011, viewed 27 July 2012, http://www.unhcr.org/4fd6f87f9.html.

40   Ibid.

41   '2012 UNHCR Country Operations Profile – Islamic Republic of Iran', *UNHCR*, 2012, viewed 26 June 2012, http://www.unhcr.org/pages/49e486f96.html and '2010 UNHCR Country Operations Profile – Pakistan', *UNHCR*, 2012, viewed 26 June 2012, http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487016&submit=GO.

42   'Protracted Refugee Situations – Iraqis', *University of Oxford Refugee Studies Centre*, February 2012, viewed 26 June 2012, http://www.prsproject.org/case-studies/contemporary/iraqis/.

43   '2012 UNHCR Country Operations Profile – Kenya', *UNHCR*, 2012, viewed 2 August 2012, http://www.unhcr.org/pages/49e483a16.html.

Figure 9. Populations of Concern to UNHCR (January 2011)
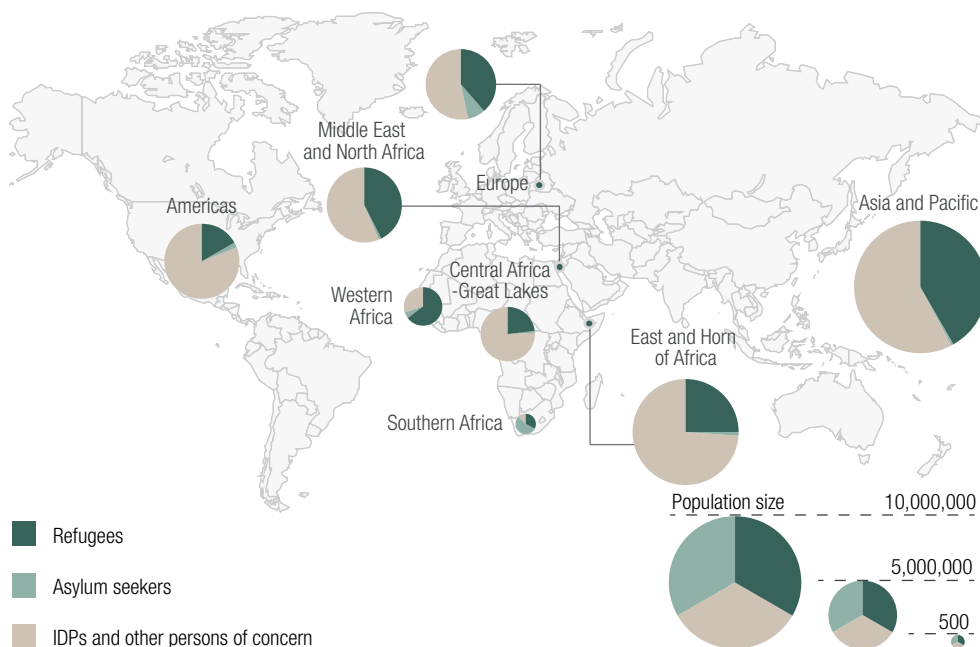
Source: UNHCR Global Trends 2011

Developing countries that host refugee populations from neighbouring states (CFAs) are often least-equipped to deal with such an influx. Most receive limited international support for the kind of capacity building that might stabilise refugee and asylum seeker populations and promote temporary protection or integration – by enabling provision of employment opportunities, education and so on – in a way that reduces the imperative for onward migration.[44]

More of the world's refugees are in protracted exile than ever before, and for longer periods.[45] Many CFAs have hosted large refugee populations for years. For countries such as Pakistan, Iran and Kenya, long-term refugee populations place additional demands on already overstretched resources and infrastructure and can contribute to 'host fatigue';[46] particularly when the chances of large-scale repatriation or international assistance towards resettlement appear slim. The Office of the United Nations High Commissioner for Refugees (UNHCR)

44   'Protracted refugee situations: the search for practical solutions', *UNHCR*, 2010, viewed
      2 August 2012, http://www.unhcr.org/4444afcb0.pdf.

45   'Protracted Refugee Situations', *Refugee Studies Centre,* University of Oxford, 2011, viewed
      2 August 2012, http://www.prsproject.org/protracted-refugee-situations/.

46   'Afghan Solutions Strategy', *UNHCR*, viewed 22 July 2012, http://www.unhcr.org/
      pages/4f9016576.html. See also 'No Turning Back: A review of UNHCR's Response to the
      Protracted Refugee Situation in East Sudan', *UNHCR*, 2012, viewed 2 August 2012,
      http://www.humansecuritygateway.com/showRecord.php?RecordId=36388.

estimates that some 7 million people are in protracted refugee situations,[47] characterised by large numbers of refugees who have moved beyond the initial emergency phase but cannot attain a durable outcome in the foreseeable future (UNHCR identifies a major protracted refugee situation as one in which more than 25,000 refugees have been in exile for more than five years). The average timeframe for these situations is now around 20 years, up from an average of nine years in the early 1990s.[48]

Global refugee numbers have remained relatively steady despite different crises and conflicts in the past decade. In the same timeframe, the number of internally displaced persons (IDPs) worldwide has consistently exceeded refugee and asylum seeker numbers; in 2011 an estimated 26.4 million people were considered internally displaced[49] (Figure 10). Unlike refugees, IDPs have not crossed an international border to seek protection, even though they may be displaced for similar reasons as refugees. IDPs also legally remain under the protection of their own government, even though that government may be the cause of their flight.

Figure 10. Global Forced Displacement 2001 - 2011
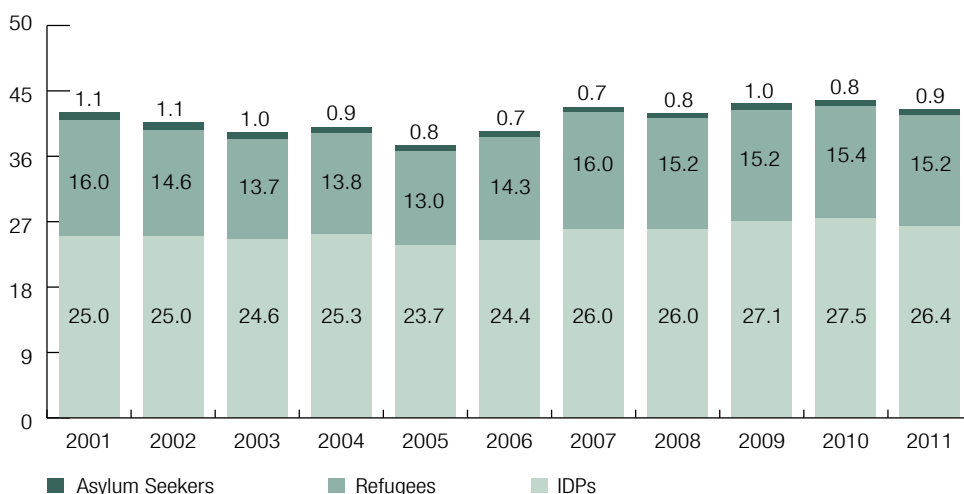
Source: UNHCR Global Trends 2011

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47   'A Year of Crises: UNHCR Global Trends 2011', *UNHCR*

48   'Protracted Refugee Situations', *Refugee Studies Centre*, University of Oxford.

49   'A Year of Crises: UNHCR Global Trends 2011', *UNHCR*

Refugee protection

The international system of refugee protection is a combination of elements, among them:

- preventative measures such as development assistance, helping with conflict resolution, peace keeping and rebuilding infrastructure;

- temporary protection in a country of first asylum until a durable outcome can be found; and

- durable outcomes promoted by UNHCR. UNHCR's primary purpose is to safeguard the rights and well being of refugees, but its ultimate goal is to help find durable outcomes that will allow refugees to rebuild their lives in dignity and peace.

UNHCR promotes three durable solutions:[50] voluntary repatriation (return), local integration and resettlement in a third country. UNHCR prefers refugees to be able to repatriate to their home country on a voluntary basis. Most refugees want to return to their homes when it is safe to do so, and this is the most desirable outcome for the individual, their society and the international community.

While difficult, repatriation is particularly important because UNHCR's two other durable outcomes are less likely to be implemented on a large-scale: comparatively small numbers of the world's displaced people are locally integrated or achieve permanent resettlement in third countries via accepted asylum processes. Support for reconstruction, reintegration and reconciliation helps ensure the success of repatriation as a durable solution.

Local integration in a CFA is an alternative in cases where voluntary repatriation is not possible. CFAs are usually in the same region as the refugee's home country, and cultural ties can make the integration process easier, while increasing the likelihood that refugees will remain in the country of asylum permanently.[51] But CFAs struggle to offer the long-term protection that helps refugees stabilise their situation in a new country, which reflects both a lack of hosting capacity and a reluctance to continue to shoulder the burden without greater assistance from the West.

Resettlement in a third country is used to provide protection to refugees whose life, liberty, safety, health or fundamental human rights are at risk in their country of asylum. UNHCR usually promotes resettlement only when refugees are unable to return to their home country, or when local integration may not be viable; or if it is part of a responsibility sharing arrangement. UNHCR undertakes Refugee Status Determination (RSD), referring eligible individuals to resettlement countries for consideration for refugee status.

Australia is one of a small number of countries that operates a formal and well-established resettlement program. The top three resettlement countries of 2011 were the US (51,500), Canada (12,900) and Australia (9,200).[52] A number of countries – particularly European

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50 'The Ultimate Goal', *UNHCR*, viewed 2 August 2012, http://www.unhcr.org/pages/49c3646cf8.html.

51 'Local Integration, the Forgotten Solution', *Migration Policy Institute*, 2003, viewed 28 July 2012, http://www.migrationinformation.org/feature/display.cfm?ID=166.

52 'Resettlement in a third country: a new beginning', *UNHCR*, viewed 2 August 2012, http://www.unhcr.org/pages/4a16b1676.html

countries – receive large numbers of asylum seekers and focus on assisting those who arrive at their border, rather than providing places through offshore resettlement programs.

Figure 11. Refugees resettled through UNHCR 2011 – by countries of resettlement
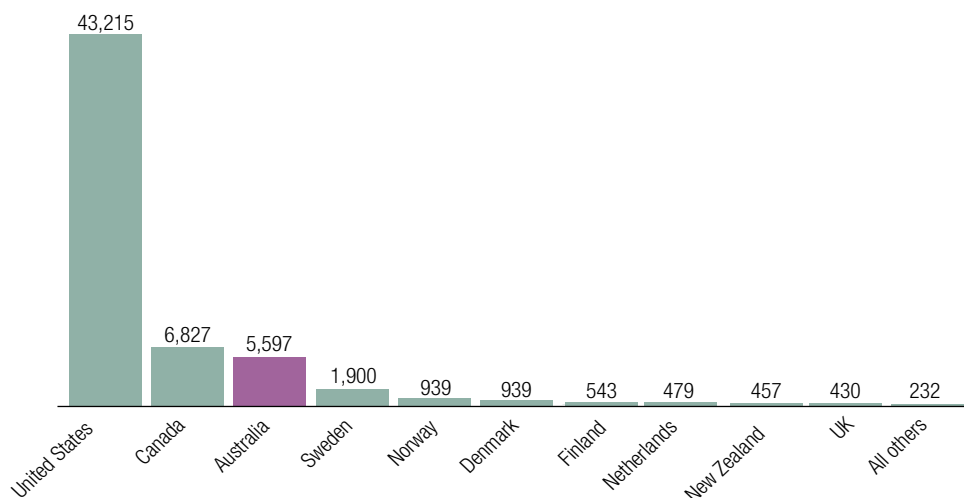
Source: UNHCR (Note: Some countries such as the US, Canada and Australia also admit refugees under family reunion and other migration programs).

The Australian resettlement program is a partnership between government and NGOs. The current annual intake in the Humanitarian program is 13,750 places, which includes an onshore protection/asylum component for people who arrive in Australia and are found to be refugees, and an offshore resettlement component, which accepts people from overseas who are referred by UNHCR as being in greatest need of humanitarian assistance.

Resettlement efforts are important, but they will not solve protracted refugee situations. There is a significant global gap between the number of people who need resettlement and the number of places available: less than one per cent of the world's refugees were resettled in 2011.[53] Of the more than 800,000 refugees considered by UNHCR to need resettlement, an estimated 80,000 of them will be given a place.[54]

53   'Resettlement in a third country: a new beginning', *UNHCR*.

54   'UN refugee chief says protracted major conflicts creating new 'global refugee' populations, *UNHCR*, 4 October 2010, viewed 27 July 2012, http://www.unhcr.se/en/print/what-we-do/ environment/artikel/f12b507a44e22095b283a215f14ce645/excom-un-refugee-chief-says-protrac. html. See also 'UN and partners to discuss ways to enhance resettlement for over 800,000 refugees', *UN News Centre*, 6 July 2012, viewed 1 August 2012, http://www.un.org/apps/news/ story.asp?NewsID=42408&Cr=refugee&Cr1.

The regional situation

The Asia Pacific region has experienced high levels of migration, particularly intra-regional migration, since the 1980s. Rapid economic growth in some countries – particularly Malaysia, Singapore and Thailand – has led to a surge in labour migration from near neighbours including Myanmar, Cambodia, Indonesia, and the Philippines.[55] Pronounced regional income disparities are an ongoing incentive for the 'poor and low skilled' to migrate. Migration from outside the region, particularly from South Asia and the Middle East – including from Afghanistan, Pakistan, Sri Lanka, Iraq and Iran – is also common. Reasons for travel vary but are usually based on a desire for work, protection, onward travel or some combination of the three. Indonesia and Malaysia, in particular, have seen a steady increase in irregular arrivals in recent years.

Extensive land and sea borders, and governments' limited capacity to adequately monitor them, mean that an estimated 30 to 40 per cent of all migration within the region is undocumented.[56] In some cases, this is because the regional mechanisms for regular migration are insufficient to address the labour shortages of expanding economies. Malaysia and Thailand, as the primary destinations in the region, host approximately three million undocumented migrants between them. Thailand alone hosts an estimated two million migrant workers, many without legal status or Thai documentation.[57] Thailand is also a major country of asylum for ethnic minorities from Myanmar, with groups of new arrivals ranging in numbers from a few hundred to several thousand entering the country on a temporary basis, due to tensions in the border area.[58]

Existing irregular migration paths into, and within, the region can facilitate secondary or onward migration to destination countries such as Canada and Australia. But many irregular migrants to the region prefer to remain, having reached a country that offers them relative security and some opportunity for livelihood. Malaysia is a good example: its Rohingya refugee population has achieved a level of *de facto* integration that means few seek

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55   'Situation report on international migration in East and South-East Asia', Regional thematic working group on international migration including trafficking, *IOM*, 2008, viewed 2 August 2012 http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/brochures_and_info_sheets/iom_situation_report.pdf. See also G Hugo, 'Migration in the Asia Pacific', *Global Commission on International Migration*, 2005, viewed 1 August 2012, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/rs/RS2.pdf. See also 'Trends & issues in Crime and Criminal Justice No. 401: Migration and people trafficking in Southeast Asia', *Australian Institute of Criminology*, 2010, viewed 2 August 2012, http://www.aic.gov.au/publications/current per cent20series/tandi/401-420/tandi401.aspx. See also S Castles and M Miller, 'Migration in the Asia Pacific Region', *Migration Policy Institute,* 2009, viewed 30 July 2012, http://www.migrationinformation.org/feature/display.cfm?ID=733.

56   G Hugo, 'Migration in the Asia Pacific', *Global Commission on International Migration*.

57   Ibid.

58   Ibid.

onward migration.[59] It is also the case that many Irregular Maritime Arrivals (IMAs) to Australia use regular migration paths in the initial stages of their journey; for example, using visa free or visa on arrival arrangements in countries in the South-East Asian region to enter and transit, before joining irregular maritime ventures to Australia.

The Asia Pacific region hosts around 24 per cent of the global refugee population, with more than 3.6 million refugees and people in refugee-like situations in the Asia Pacific today (Figure 12).[60]

Figure 12. Asia Pacific Region 2011: Key host countries of persons of concern to UNHCR
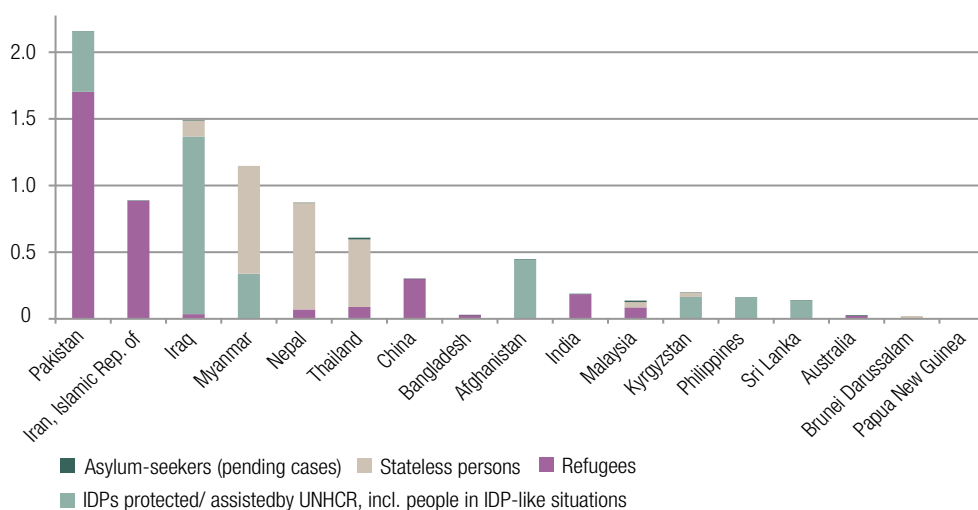
Source: UNHCR Global Trends 2011 and UNHCR Bureau for Asia and the Pacific Country Operations Fact Sheets February 2012.

Despite the relatively few countries party to the Refugees Convention in the region, a long-standing humanitarian tradition of hosting refugees in the region provides them with some support (although it does not guarantee international standards of protection).[61] Besides Australia, regional signatories to both the Refugees Convention include[62] Afghanistan, Cambodia, China, Fiji, Iran, Japan, Kazakhstan, Kyrgyzstan, Nauru, New Zealand, Papua New Guinea (PNG) (with numerous reservations), the Philippines, Samoa, Solomon Islands, Tajikistan, Timor-Leste, Turkmenistan and Tuvalu. Of these, some have a national asylum system in place to identify asylum seekers and refugees and provide them with legal

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59   S Cheung, 'Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience', *Journal of Refugee Studies* Vol. 25 (1), 2012, pp50-70. See also 'Palestinians pick Malaysia to look for refuge', *New Straits Times*, 28 July 2012, viewed 4 August 2012, http://www.nst.com.my/latest/palestinians-pick-malaysia-to-look-for-refuge-1.114261.8.

60   'Country Operations Fact Sheets February 2012', *UNHCR Bureau for Asia and the Pacific*, viewed 3 August 2012, http://www.unhcr.org/pages/4a02d8ec6.html.

61   G Hugo, 'Migration in the Asia Pacific', *Global Commission on International Migration.*

62   'Country Operations Fact Sheets February 2012', *UNHCR Bureau for Asia and the Pacific.*

protection, although most of these are limited in scope and not fully functional. Only the Philippines has acceded to the *1954 Convention relating to the Status of Stateless Persons* and no country in the region has yet acceded to the *1961 Convention on the Reduction of Statelessness*. In the rest of the region, UNHCR takes responsibility for identifying and assisting people in need of international protection, as well as providing RSD assistance to countries such as Cambodia and PNG.

Refugee determination in the Asia Pacific is complicated by mixed migration flows. There is a clear difference between forced displacement and irregular labour migration to (and within) the region. But increasingly, the two intersect to create mixed migration flows: economic migrants, refugees and asylum seekers often travel in the same direction, using the same routes and modes of transport and facing the same risks *en route*.[63] Migrants and refugees alike hire smugglers and are exploited by traffickers. People also move for a combination of reasons; individuals who leave their countries of origin for protection reasons may take social and economic factors into account when choosing destinations, such as seeking to join extended family or community networks elsewhere.

For many, the ability to claim asylum, and the quality of that asylum, at their final destination is an important factor. It is common for smugglers to make use of the Refugees Convention when moving irregular migrants and asylum seekers to favourable destinations, relying on destination countries' reluctance to risk returning a person to circumstances in which they face the risk of serious harm.

The Australian context

The Australian experience of irregular migration has been quite different from that of Europe or North America. Unlike other destination countries, the majority of IMAs to Australia come from just a handful of source countries: Afghanistan, Pakistan, Iran, Sri Lanka and Iraq (or are stateless). Australia's exceptional ability to control its borders means that the only way a migrant who has arrived in Australia without documentation can remain is to claim asylum.

In the global context, Australia remains a minor destination country for irregular migrants and asylum seekers (Figure 13). It received 2.5 per cent of global asylum claims in 2011 (including air and maritime arrivals).[64] For the comparatively few labour migrants and asylum seekers who move beyond the developing world, western Europe, North America, and even parts of eastern Europe and the Middle East, are attractive destinations closer to home.

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63   'Challenges of Irregular Migration: addressing mixed migration flows', *IOM Council Papers*, MC/INF/294, 2008 and 'Irregular Migration and Mixed Migration Flows: IOM's approach', *IOM* MC/INF/297, 2009.

64   'Fewer asylum claims in Australia', *UNHCR*.

Figure 13. Quarterly number of asylum claims submitted in selected regions 2009-2011
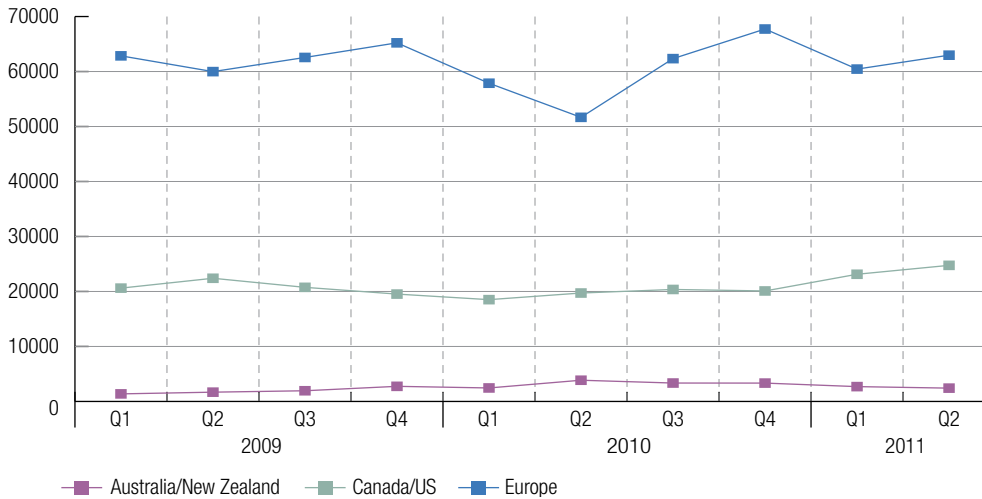
Source: UNHCR: Asylum Levels and Trends in Industrialised Countries (to first half of 2011).

But Australia is not immune to global pressures that contribute to irregular migration and asylum seeker flows. Historically, the number of air arrivals seeking and obtaining protection in Australia has exceeded the number of IMA asylum seekers. Since late 2008, over 18,000 IMAs have arrived in Australia; the only comparable time for this number and tempo of boat arrivals was more than a decade ago, when 12,176 people arrived on 180 vessels in 1999 – 2001 (Table 6).

This accelerated pace of boat arrivals has changed the composition of Australia's onshore protection caseloads and put significant pressure on the asylum system. Growing numbers of would-be asylum seekers joining irregular maritime ventures to Australia have also led to loss of life at sea: since 2000, an estimated 946 people have died (or been presumed deceased) while attempting to reach Australia by boat, 604 of them since October 2009.[65]

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65   See Table 7 in Attachment 2, 'Number of Deaths and Missing Persons at Sea from October 2001 to June 2012', *Australian Customs and Border Protection Service (ACBPS),* 2012.

Table 6. IMAs in Australia (boat arrivals)

		98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13 (to 31/7/12)	TOTAL
Total	Total vessels	42	75	54	17	1	2	0	6	3	3	23	117	89	111	32	575
	Total people	919	4,175	4,137	3,049	1	68	0	57	96	25	980	5,315	4,700	8,092	1,798	33,412
Country of origin	Afghanistan	92	1,270	2,250	1,121	0	0	0	3	0	0	574	2,990	1,309	3,384	367	13,360
	Iraq	120	2,253	1,012	1,521	0	0	0	0	0	0	67	374	471	402	71	6,291
	Iran	0	230	517	115	0	0	0	0	0	0	20	358	1,643	1,425	312	4,620
	Sri Lanka	21	32	59	178	0	0	0	0	83	0	291	770	242	1,356	712	3,744
	Stateless*	0	19	132	32	1	0	0	1	0	0	18	578	724	660	205	2,370
	Other	686	371	167	82	0	68	0	53	13	25	10	245	311	865	131	3,027

Source: Department of Immigration and Citizenship (DIAC).

* Includes Rohingya, Palestinians and Faili Kurds.

ATTACHMENT 2: PEOPLE SMUGGLING AND AUSTRALIA

It is difficult to provide a comprehensive global picture of people smuggling. By its nature, people smuggling is a criminal activity that is not always visible or quantifiable. Worldwide, certain irregular migration patterns, routes and trends are well understood, but there are also regions and countries in which this kind of information is not collected, or not analysed.

The precise number of people who travel irregularly is unknown, although it is estimated that of the 214 million international migrants worldwide, 10-15 per cent (up to 32 million people) are in an irregular situation.[66] Of these irregular migrants, it is increasingly assumed that – partly in response to tightening border controls and immigration policies – the majority pay for the services of people smugglers at some point in their journey.[67] Many of the people using the services of a people smuggler are asylum seekers as well as being irregular migrants.

People smuggling defined

Article 3 of the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* (Migrant Smuggling Protocol) supplementing the *United Nations Convention Against Transnational Organised Crime* states that three conditions must be met in order to constitute 'migrant smuggling and related conduct'.[68] To be considered a people smuggler, an individual must procure the illegal entry or residence of a person into a country (of which that person is not a national or a permanent resident) for financial or material gain.

Article 6 of the same Protocol criminalises such activity, as well as requiring states to criminalise producing, obtaining or possessing fraudulent travel documents for the purpose of enabling people smuggling.[69] Iraq, Sri Lanka, Thailand and Indonesia are among the parties to the Convention and the Migrant Smuggling Protocol affected by irregular migration flows to Australia.

Migrant smuggling is distinct from human trafficking, although these distinctions are not always clear and the two activities can occasionally overlap: as when irregular migrants who

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66   'World Migration Report 2010', *IOM*, 2010, viewed 1 August 2012, http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/wmr-2010/4-Irregular-Migration.pdf.

67   'The Smuggling of Migrants by Sea', *United Nations Office on Drugs and Crime (UNODC)* Issue Paper, p19, viewed 27 July 2012, http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf. See also 'Defending Refugees' Access to Protection in Europe', *European Council on Refugees and Exiles*, 2007, viewed 27 July 2012, http://www.unhcr.org.refworld/docid/4766464e2.html.

68   'Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime', *General Assembly Resolution 55/25 of 15 November 2000*, viewed 26 July 2012, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_smug_eng.pdf.

69   'Migrant Smuggling: Frequently Asked Questions', *UNODC*, viewed 3 August 2012, http://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html.

have agreed to be smuggled are later deceived or coerced into an exploitative situation. In general terms, migrant smuggling is characterised by consent and a lack of exploitation. Smuggled migrants consent to be smuggled, even if the circumstances of their journey are appalling or dangerous. Their journey ends when they have arrived at their intended international destination, and they usually provide payment of some kind in exchange for being smuggled. By contrast, trafficking involves the ongoing exploitation of a victim without their consent, and profits are usually derived from the process of exploitation rather than from the act of facilitating irregular migration.

Australian domestic legislation reflects the definition of people smuggling contained within the Migrant Smuggling Protocol. But section 236B of the *Migration Act 1958*, added in 2010,[70] also provides for the application of mandatory minimum penalties[71] for certain aggravated people smuggling offences:

- People smuggling involving exploitation, or danger of death or serious harm.

- People smuggling at least five non-citizens who have no lawful right to come to Australia.

- Presenting, making, delivering or transferring forged documents or false and misleading information in connection with the entry to Australia of non-citizens (at least five people).

Mandatory minimum penalties for any of the above are at least five years (eight years if a conviction for a repeat offence) with non-parole periods of at least three years.

Smugglers

For organisers and facilitators, people smuggling is a 'low risk, high profit' business, with estimated annual profits between USD 3 and USD 10 billion.[72] Only a limited number of governments have specific policies and legislation in place to address people smuggling, and prosecutions can be difficult: securing smuggled migrants as witnesses is an ongoing problem, as is a lack of capacity to investigate and prosecute in some countries. It is also the case that in certain countries, people smuggling carries no criminal stigma but is simply viewed as 'normal business'; irregular migration is facilitated by businesses that also conduct legitimate activities, such as travel agencies or transport companies.[73]

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70   Added by the *Anti-People Smuggling and Other Measures Act 2010*, available at *ComLaw*, viewed 2 August 2012, http://www.comlaw.gov.au/Details/C2010A00050. Further information on the Act is available at 'Departmental Information', *DIAC*, viewed 2 August 2012, http://www.immi.gov.au/legislation/amendments/2010/100701/lc01072010-01.htm.

71   Mandatory minimum sentences were introduced in 2001, as part of the *Border Protection (Validation and Enforcement) Act 2001*, viewed 2 August 2012, http://www.comlaw.gov.au/Details/C2004C01199/Html/Text#_Toc1241066794258.

72   'The International Organization for Migration and People Smuggling', *IOM*, 2011, viewed 23 July 2012, http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/ibm/10-IOM-IBM-FACT-SHEET-People-smuggling.pdf.

73   'Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications', *United Nations Office on Drugs and Crime (UNODC)*, 2011, viewed 1 August 2012, http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling_of_Migrants_A_Global_Review.pdf.

Inevitably, such a profitable and low-risk enterprise draws in a range of people smugglers, from local opportunists to more organised criminal networks, and reflects a variety of people smuggling services and methods. The methods by which people are smuggled depend on the organisers and the region but can also be affected by the preferences and resources of the migrant paying for the service.[74] The relative economic status of irregular migrants is not an indication of their protection needs, although it can make a difference to their means of travel. Those irregular migrants with better financial capacity to access particular smuggling services may utilise less dangerous routes for most, if not the entirety, of their journey.

Moving an individual across national borders illegally requires planning. The amount of planning required increases as irregular migration routes become more complicated, possibly moving through a number of transit points and countries to reach an end destination.[75] Smuggling services offered to migrants can range from simple one-off services to more comprehensive packages that cover air and/or land legs of the journey as well as falsified or fraudulent documents to enable entry into the country of destination.

Similarly, the sophistication of people smugglers varies from loose amateur groups specialising in facilitating particular routes, through to transnational and/or organised crime groups that may also be involved in other criminal activities that may or may not be related.

A number of people smugglers may be involved in smuggling one individual. Although the smugglers may only be loosely connected, each will fulfil specific requirements in the smuggling chain. Organisers or coordinators oversee the process, utilising contacts to arrange essential personnel, routes, modes of transportation, accommodation, falsified or fraudulent documents and (often) access to corrupt officials. These individuals might be considered people smuggling 'kingpins', overseeing and planning significant people smuggling activity and making the largest proportion of the profits. Further down the chain, intermediaries or brokers are usually located at key hubs in common migration routes. Often of the same ethno-linguistic background as the migrants they recruit, they may work for more than one organiser.[76] Others in a network may procure vessels or provide accommodation, or act as financial guarantors (holding payment until journeys have been successful). An even broader network of individuals, less well paid and less well informed, will provide transport, act as guides, police spotters, boat crew and so on.[77] For those irregular migrants en route to Australia from Indonesia, boat crew – usually young males recruited out of fishing villages – are the last and lowest link in the chain.

74   'The Smuggling of Migrants by Sea', *UNODC*.

75   R Tailby, 'Trends and Issues in Crime and Criminal Justice no. 208: Organised Crime and People Smuggling/Trafficking to Australia', *Australian Institute of Criminology*, 2001, viewed 29 July 2011, http://www.aic.gov.au/documents/7/F/E/ per cent7B7FE1BB81-D038-4C1E-A34D-8453FAAC6D2F per cent7Dti208.pdf.

76   'The Smuggling of Migrants by Sea', *UNODC*.

77   'Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications', *UNODC*.

Maritime people smuggling

Around the world, migrant smuggling by sea accounts for significantly less smuggling than air or land routes.[78] Smuggling by sea is often just one stage of a larger journey that involves land and air movements as well. But smuggling by sea is disproportionately important to particular groups of migrants as the best, or possibly only, form of available transport for a particular leg of their journey – those crossing the Gulf of Aden from Africa to Yemen, for example, or IMAs to Australia.

Migrant smuggling by sea is also the most dangerous type of smuggling for the migrants concerned, with more deaths occurring at sea than through irregular land or air travel.[79] The dangers of irregular maritime travel to Australia are apparent (Table 7), while similar loss of life has occurred in the Mediterranean and other established irregular maritime routes.

Maritime smuggling has different characteristics worldwide, but research has shown that it is more often carried out by criminal groups or individuals operating on loose transactional or contractual arrangements, than by strict hierarchical organisations.[80] Such a model gives people smugglers the flexibility to swiftly adapt to changing circumstances and to evade law enforcement authorities. Methodology also varies, although two broad approaches can be seen. At the point of arrival, smugglers aim either to reach their destination undetected by authorities – as with Cuban and Haitian vessels attempting to reach the US – or set out to be detected and intercepted or rescued by authorities within the territorial waters of the destination country.[81] This last approach is the most common for irregular maritime ventures to Australia.

Maritime people smuggling within and through the South-East Asian region is relatively common, whether moving would-be illegal workers (such as boats carrying Rohingyan passengers hoping to work (illegally) in Thailand or Malaysia) or asylum seekers. Within South-East Asia, Australia is a key destination for asylum seekers, although the region also serves as a hub for other nationalities intending to claim asylum elsewhere. In recent years, Indonesia and the Gulf of Thailand have been staging or loading areas for irregular Tamil migrants on the way to Canada; a group of 76 on the *MV Ocean Lady* in October 2009 and a further 492 passengers on the *MV Sun Sea* in August 2010.[82] Other individuals in the region have attempted to reach New Zealand via maritime ventures[83].

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78   'The Smuggling of Migrants by Sea', *UNODC.*

79   Ibid.

80   A Schloenhardt, 'Research and Public Policy Series No. 44: Organised Crime and Migrant Smuggling Australia and the Asia Pacific', *Australian Institute of Criminology*, 2002, p26, viewed 22 July 2012, http://www.aic.gov.au/documents/9/7/E/ per cent7B97EFC2BE-3D43-4E9B-B9D0-4AC71800B398 per cent7Drpp44.pdf.

81   'The Smuggling of Migrants by Sea', *UNODC.*

82   'Investigation of migrant ship sharply criticized by Crown prosecutors', *The National*, 10 May 2011, viewed 31 July 2012, http://news.nationalpost.com/2011/05/10/investigation-of-tamil-migrant-ship-sharply-criticized-by-prosecutors/. 'Toronto Man arrested in MV Sun Sea human smuggling case: RCMP', *The National*, 6 June 2012, viewed 31 July 2012, http://news.nationalpost.com/2012/06/06/toronto-man-arrested-in-mv-sun-sea-human-smuggling-case-rcmp/.

83   'Chinese boatpeople weigh up NZ journey', *Sydney Morning Herald*, 11 April 2012, viewed 31 July 2012, http://www.smh.com.au/opinion/political-news/chinese-boatpeople-weigh-up-nz-journey-20120410-1wn1p.html.

Australian context

The two possible means of entry to Australia are by air or sea. Organised facilitation of irregular entry occurs via both routes. However, arrival by air, while possible, is more difficult: some form of fraudulent documentation, access to corrupt officials en route, or both, is usually necessary.[84] It is more common for air arrivals to exploit the visitor visa system, individually or in groups. Boat ventures better suit those without access to air travel. But those who decide to join irregular maritime ventures to Australia take significant risks; since 2001, 964 passengers have died (or gone missing, presumed dead) on irregular maritime ventures.

Table 7.   Number of Deaths and Missing Persons at Sea from October 2001 to June 2012

Date	Boat name	Estimated deaths/ missing persons	Incident Details
19-10-01	SIEV X	352*	Foundered vessel off Indonesia, 352 missing presumed drowned
8-11-01	SIEV 10	2	Foundered vessel , 2 confirmed deceased
15-04-09	SIEV 36	5	Explosion on boat near Ashmore Reef, 5 deceased, multiple casualties
10-09	Unknown	103**	Alleged missing vessel, all passengers missing presumed drowned
1-11-09	SIEV 69	12	Foundered vessel, 12 confirmed deceased
9-05-10	SIEV 143	5*	5 passengers missing presumed drowned after abandoning vessel north of Cocos Islands
11-10	Unknown	97**	Alleged missing vessel, all passengers missing presumed drowned
15-12-10	SIEV 221	50*	Foundered Vessel off Christmas Island, 30 deceased, up to 20 missing presumed drowned
1-11-11	N/A	30*	Foundered vessel off coast of southern Java, Indonesia, 8 confirmed deceased, 22 unaccounted for presumed drowned
17-12-11	N/A	201*	Foundered vessel off the coast of central Java, Indonesia, 103 confirmed deceased, 98 missing presumed drowned, 49 rescued
1-02-12	N/A	11	Foundered vessel off Johor, Malaysia, 11 confirmed deceased
21-06-12	N/A	92*	Foundered vessel north east of Christmas Island, 17 confirmed deceased, up to 75 unaccounted for presumed drowned, 110 rescued
27-06-12	N/A	4*	Foundered vessel north of Christmas Island, 1 confirmed deceased, 1-3 unaccounted for (the range is due to some passengers claiming they saw two crew members 'get away' when the boat started taking on water, that is, two of the unaccounted for may not have perished), 130 rescued.
Total		**964*****	

*   *Total denotes estimated number of persons unaccounted for.*

**   *Estimates are derived from publicly available information and are generally believed to account for all those persons unaccounted for on the alleged missing vessels of October 2009 and November 2010.*

*** *Total inclusive of estimates for October 2009 and November 2010 alleged missing vessels.*

Source: ACBPS and DIAC.

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84   'The Smuggling of Migrants by Sea', *UNODC.*

Since the beginning of 2012, a number of boats carrying Sri Lankan asylum seekers have arrived at the Cocos (Keeling) Islands en route to Australia. But unless earlier intercepted by Australian maritime authorities, the vast majority of irregular maritime ventures to Australia continue to arrive off Australia's northern coastline, at either Ashmore or Christmas Island.

Figure 14. Christmas, Cocos and Ashmore and Cartier Islands
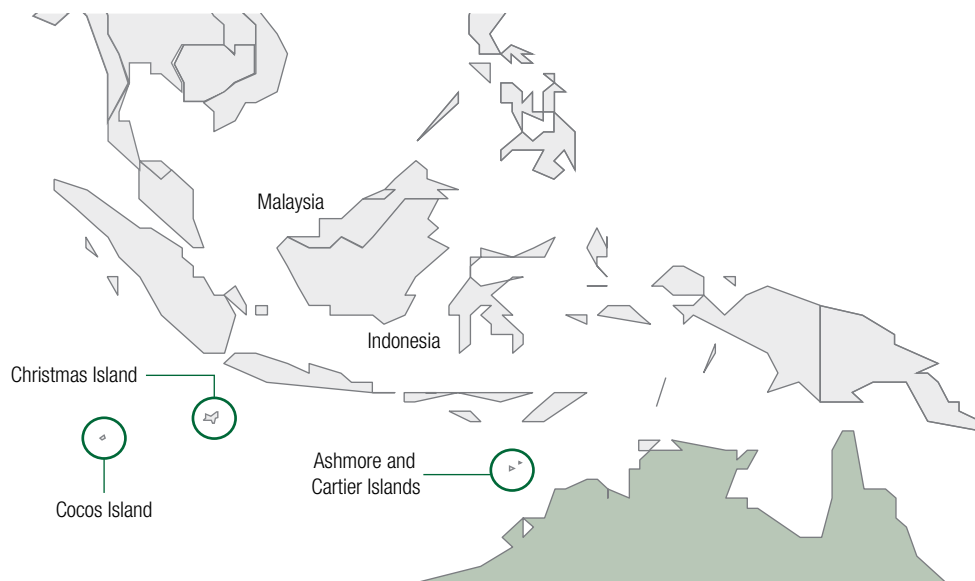
Source: Taskforce supporting the Expert Panel on Asylum Seekers

With the exception of some boats carrying Burmese or Rohingyan asylum seekers, it is rare that IMAs to Australia are nationals of countries in the South-East Asian region. Boat arrivals are dominated by a few key nationality groups, primarily Afghan Hazaras, Iranian, Iraqi and Sri Lankan nationals. The high number of particular nationalities migrating to Australia by boat demonstrates the sophistication and ability of people smugglers in source, transit and sometimes in destination countries to move large numbers of people through the region, with all of the contacts and planning that entails.

Aside from the Sri Lankan ventures, nearly all current IMAs depart from Indonesia (some ventures departed from Malaysia before 2010). Almost always, these boat ventures represent the final leg of an irregular migrant's longer journey from the Middle East or South Asia. For some IMAs, the network that they use for one leg may not be the same as for others; it is increasingly common for smugglers to specialise in particular routes. In South-East Asia, this may mean that an IMA pays for a smuggling package overland or by air to Indonesia, but will then need to broker a separate deal for the final boat leg to Australia. For many Iranian IMAs, who are able to utilise Indonesia's visa free and visa-on-arrival arrangements, the final boat leg is the only point at which they engage a smuggler's services. Other key nationalities joining boat ventures to Australia – Afghans, Iraqis, and to a lesser extent, Sri Lankans or Pakistanis – may need to travel through a series of transit countries to do so, sometimes before even reaching South-East Asia.

An international response

People smuggling is a global and a regional problem. To facilitate and profit from irregular migration, networks need to transcend international borders, undermining state sovereignty and security in addition to risking the safety of irregular migrants. A successful response to people smuggling requires strengthening international cooperation – between source, transit and destination countries – to remove 'areas of impunity' for smugglers along smuggling routes[85] and to promote practical measures for cooperation such as:

- effective information and intelligence sharing;

- law enforcement and immigration cooperation;

- increasing public awareness to discourage people smuggling and warn those who may be susceptible; and

- addressing the root causes of irregular migration.

Australia is an active participant in regional (and global) mechanisms that facilitate cooperation on combating people smuggling, such as the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.*

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85   'The Smuggling of Migrants by Sea', *UNODC.*

ATTACHMENT 3: AUSTRALIA'S INTERNATIONAL LAW OBLIGATIONS WITH RESPECT TO REFUGEES AND ASYLUM SEEKERS

Introduction

There are four areas of international law that are likely to be of most relevance to Australia's policies with respect to asylum seekers:

- the Refugees Convention;
- international human rights law;
- the law of the sea; and
- principles of state responsibility.

The applicable international law will depend on the details of a specific policy and the implementation of that policy.

As a general statement, legislation alone is unlikely to be able to guarantee compliance with Australia's international law obligations. Compliance depends on what Australia does by way of legislation, administration and practice.

Refugees Convention

The Refugees Convention defines the word 'refugee' and provides that Contracting States need to accord to refugees certain standards of treatment. Australia is a party to the Refugees Convention.

Who is a refugee?

Article 1A(2) defines a refugee as any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion:

- is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or
- who, not having a nationality and being outside the country of his/her former habitual residence is unable or, owing to such fear, is unwilling to return to it.

Article 1C relates to the cessation of refugee status. It sets out the circumstances in which the Refugees Convention will cease to apply to refugees. For example, the Refugees Convention will cease to apply to a refugee who can no longer continue to refuse to avail himself/herself of the protection of his or her country of nationality because the circumstances in connection with which he/she has been recognised as a refugee have ceased to exist.

Under the Convention, certain persons can be excluded from refugee status such as where there are serious reasons for considering that the person has committed a war crime or crime against humanity) (Article 1F). Other persons, although determined to be a refugee, may still be able to be returned to their country of origin. For example, where they represent a danger to the security of the country or have committed a particularly serious crime.

Where does the Refugees Convention apply?

There are a range of views within the international law community on this issue.

The position of successive Australian Governments has been that the Refugees Convention only applies to persons within Australia's territorial boundaries (that is, landward of the outer limits of the territorial sea).

Non-refoulement

Under Article 33(1) of the Refugees Convention, a Contracting State has an obligation to not expel/return (that is, *refoule*), either directly or indirectly, a refugee to a place where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.

Non-refoulement obligations apply to the transfer of a refugee to a third country, regardless of whether or not that third country is a Contracting State to the Refugees Convention.

A Contracting State must examine whether its *non-refoulement* obligations would prevent the transfer of a refugee to a country which is not the refugee's country of origin.

- A Contracting State cannot transfer a refugee to a third country if the refugee has a well-founded fear of persecution in that third country, or if there is a risk that the third country will return the refugee to another country (for example the country of origin) where the refugee has a well-founded fear of persecution.

- These obligations also apply to the return of a refugee to a transit country, where the refugee may have been for a temporary period of time.

As making a determination about a person as a refugee is only declaratory of their existing refugee status, these obligations in effect apply to asylum seekers who have yet to be assessed. That is, they are asylum seekers who may actually be refugees.

Penalties

Depending on the circumstances, transit through third countries may still constitute coming directly from a territory where a refugee's life or freedom was threatened.

What is the process for deciding a person is a refugee?

The Refugees Convention does not indicate what procedures are to be adopted for the determination of refugee status. It is left to each Contracting State to establish the procedure for refugee status assessments that it considers most appropriate. However, UNHCR has provided guidance on this matter.

What does the Refugees Convention require?

Contracting States must apply the provisions of the Refugees Convention to refugees without discrimination as to race, religion or country of origin (Article 3).

What standard of treatment a Contracting State is required to accord to refugees depends on the level of 'connection' that the refugee has with the State. The levels of 'connection' can generally be broken into the following categories:

- All refugees 'lawfully in' (that is, lawfully present in) a country.
- Refugees 'lawfully staying' (that is, ongoing presence, residence) in a country.
- Refugees 'habitually resident in a country' (for example artistic rights and industrial property rights) (Article 14).

There is no rule under international law that an asylum seeker must seek protection in the first State in which effective protection might be available. However, a refugee does not have an entitlement, under international law, to have his or her status determined in a particular place.

International human rights law

Non-refoulement

Australia has obligations under the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* not to return a person to a country where he/she would be at a real risk of irreparable harm by way of arbitrary deprivation of life or application of the death penalty, torture, or cruel, inhuman or degrading treatment or punishment.

Where *non-refoulement* concerns arise, an assessment of the real risk of harm must take into account all the circumstances of the particular case. These could include: the personal risk faced by the claimant; the human rights record of the relevant country; and, if relevant, the content and credibility of any agreements or assurances as to treatment.

Australia's *non-refoulement* obligations under international human rights law exist regardless of whether a person is entitled to *non-refoulement* protection under the Refugees Convention.

Non-discrimination

Australia has obligations under a number of treaties, including the ICCPR (Articles 2, 3 and 26), *International Covenant on Economic, Social and Cultural Rights* (Articles 2 and 3) and the *Convention on the Rights of the Child* (CRC) (Article 2), not to discriminate on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

However, not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the relevant treaty. The requirement of reasonableness includes a consideration of proportionality to the aim to be achieved.

Rights of the child

Article 3 of the CRC requires Australia to ensure that the best interests of the child are a primary consideration in any actions involving a child.

In addition, Article 24(1) of the ICCPR requires Australia to take such measures of protection as are required by a child's status as a minor. Article 24(1) does not, however, define which protective measures are required by a child's status as a minor.

Family rights

There is no right to 'family reunion' under international human rights law.

Article 10(1) of the CRC requires States Parties to deal with applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification in a positive, humane and expeditious manner.

Articles 17(1) and 23(1) of the ICCPR require States Parties to ensure that there is no *arbitrary* interference with the family and to protect the family.

Extraterritorial application of international human rights law

There are a range of views within the international law community on this issue.

The Australian Government has acknowledged, at least in relation to the ICCPR, that 'there may be exceptional circumstances in which the rights and freedoms set out under the Covenant may be relevant beyond the territory of a State party'. The Government has accepted that Australian's human rights obligations may apply extraterritorially where it is exercising 'effective control' over territory abroad (this includes exercising the power to proscribe and enforce laws).

International bodies, including the UN Human Rights Committee and the European Court of Human Rights, have held that, in certain circumstances, a person will be subject to a State's jurisdiction where the State exercises 'effective control' over a person extraterritorially – in which case, relevant human rights obligations will apply.

Law of the sea

Australia's obligations that relate to the interdiction of a suspected irregular entry vessel (SIEV), the rescue of persons at sea and safety of life at sea (in addition to any obligations under international human rights law and the Refugees Convention) arise from:

- the *United Nations Convention on the Law of the Sea* (UNCLOS);
- the *International Convention on Maritime Search and Rescue* (SAR Convention); and
- the *International Convention for the Safety of Life at Sea* (SOLAS Convention).

UNCLOS

UNCLOS sets out the jurisdictional status of waters and also provides for a duty to render assistance.

Jurisdictional status of waters

UNCLOS identifies five maritime zones which may be relevant to interdiction, including:

- internal waters (Articles 2, 8);
- territorial sea (Articles 2, 3, 4, 17);
- contiguous zone: (Article 33);
- exclusive economic zone: (Articles 55, 56, 57); and
- high seas: (Article 86).

A coastal State has a right of 'hot pursuit' which can be exercised when it has good reason to believe that a foreign-flagged vessel has violated its laws and regulations.

A State can interdict a foreign-flagged vessel in the high seas with the flag State's consent. The powers that may be exercised on board the vessel are those which have been agreed with the flag State.

Duty to render assistance

Every State must require the master of a vessel flying its flag, in so far as he or she can do so without serious danger to the vessel, crew or passengers, to:

- render assistance to any person found at sea in danger of being lost; and
- in so far as such action may be reasonably expected of the master, proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance (Article 98(1)(a), (b)).

SAR Convention

A Party has an obligation to use search and rescue units, and other available facilities, to provide assistance to persons in distress at sea in its search and rescue region (SRR).

Parties shall ensure that assistance is provided to any person in distress at sea, regardless of the nationality or status of a person or the circumstances in which the person is found.

SOLAS Convention

On receiving information that persons are in distress at sea, the master of a ship, which is in a position to provide assistance, must proceed with all speed to their assistance.

- This obligation applies regardless of the nationality or status of such persons or the circumstances in which they are found.

Where assistance has been provided to persons in distress in a State's SRR, that State has primary responsibility to ensure that coordination and cooperation occurs between Governments, so that survivors are disembarked from the assisting ship and delivered to a place of safety.

As a matter of practice 'a place of safety' could be the nearest convenient port. This will not necessarily be a port in the territory of the State in whose SRR an incident occurs, nor in the territory of the State of the vessel rendering assistance.

State responsibility

If a breach of an international obligation (such as a human rights obligation) occurs, international law prescribes rules which determine when a particular State is responsible for that breach. Key principles of state responsibility include:

- A State is responsible for conduct that may be attributed to it. The basic principle is that a State will be responsible for any actions of its officials to the extent that they are acting in a government capacity.
- The conduct of bodies which are not, or persons who are not, State organs may also be attributed to a State if, for example, the State instructs or directs or controls that conduct.
- In addition, a State may be responsible for wrongful conduct committed by another State, where the first State knowingly aids or assists in that conduct.

ATTACHMENT 4: AUSTRALIA'S CONTRIBUTION TO INTERNATIONAL PROTECTION

Introduction

As a member of the international community, Australia shares responsibility for protecting refugees and resolving refugee situations. Australia is an active contributor to the system of international refugee protection, working with UNHCR and the international community to contribute towards comprehensive, integrated responses to refugee situations.

Influencing international policy and action on refugee situations

Australia engages in a number of international fora with intergovernmental organisations and non government partners to address international protection issues. This includes active participation in UNHCR's governance and policy discussions, resettlement meetings and informal consultations on emerging issues. For example, as a member of UNHCR's Executive Committee, Australia meets with other members every year to review and approve the agency's programs and budget and to discuss a wide range of international protection and other issues.

Australia is also an active participant at the Annual Tripartite Consultations on Resettlement (ATCR), which brings together UNHCR, resettlement states and non-government organisations (NGOs). It provides the opportunity to address a range of policy and procedural matters, including: advocacy, capacity building and operational support. Australia was the chair of ATCR in 2011-12 with the Refugee Council of Australia as the partner NGO.

In addition to participating in broader international fora, Australia is a leader in refugee policy and action within our own region. See Attachment 6 for further detail on Australia's regional involvement on refugee and asylum seeker issues.

International development assistance and capacity building

Australia helps to ease the plight of refugees and displaced persons through targeted development assistance provided by Australian Government agencies. See Attachment 6 and www.ausaid.gov.au for further detail on Australia's international development assistance relating to refugee situations.

Humanitarian Program and how Australia implements its international protection obligations

The Humanitarian Program has two important functions:

A. It enables Australia to fulfil its international obligations under the Refugees Convention and other relevant human rights conventions containing *non-refoulement* (non-return) obligations by offering protection to people already in Australia. Successful applicants are granted a permanent Protection visa.

B. It expresses Australia's commitment to refugee protection by going beyond these obligations and offering resettlement to people overseas for whom this is the most appropriate option.

The offshore resettlement component comprises two categories of permanent visas:

A. A refugee category for people who are subject to persecution in their home country, who are typically outside their home country, and are in need of resettlement. The majority of applicants who are considered under this category are identified and referred by UNHCR to Australia for resettlement. The Refugee category includes the Refugee, In-country Special Humanitarian, Emergency Rescue and Woman at Risk visa subclasses.

B. A Special Humanitarian Program (SHP) category for people who:

B.1   are outside their home country, subject to substantial discrimination in their home country and proposed by a person or an organisation in Australia; or

B.2   have a proposer in Australia who is an immediate family member.

In the case of persons in category B.1 above, proposers must be Australian citizens, permanent residents or eligible New Zealand citizens or organisations operating in Australia. For category B.2 proposers must hold or have held a specified humanitarian visa. For both categories, applicants must meet 'compelling reasons' for grant criteria.

Visa options

Permanent humanitarian visas (offshore application)

Within the offshore component of the Humanitarian Program there are five visa subclasses. Four subclasses fall within the Refugee category and one within the SHP.

The Refugee category assists people who are subject to persecution in their home country and have a strong need for resettlement. In selecting people under this category Australia works closely with UNHCR – which refers most applicants that are resettled in Australia. The visa subclasses within the Refugee category are:

- Refugee – for applicants who have fled persecution in their home country and are living outside their home country.

- In-country Special Humanitarian – for applicants living in their home country who are subject to persecution.

- Emergency Rescue – for applicants who are living in or outside their home country and who are in urgent need of protection because there is an immediate threat to their life and security.

- Woman at Risk – for female applicants and their dependants who are subject to persecution or are people of concern to UNHCR, are living outside their home country without the protection of a male relative and are in danger of victimisation, harassment or serious abuse because of their gender. This subclass recognises the priority given by UNHCR to the protection of refugee women who are in particularly vulnerable situations.

People granted a permanent humanitarian visa have the same access to government support services as other permanent residents in Australia. In recognition of the challenges in adjusting to a new life in another country, the government also provides a range of services to support refugee and humanitarian entrants once they arrive. This assistance, provided within their first five years of settlement, is designed and administered through specialised settlement programs and services which:

- provide settlement information and orientation;

- address English language learning, translating and interpreting needs;

- provide support to the community development of new cultural groups; and

- address specialist needs, such as torture and trauma counselling.

Refugee and humanitarian entrants may also be eligible for assistance under the Humanitarian Settlement Services (HSS) scheme, which provides a coordinated case management approach tailored to the individual's needs.

Permanent protection visa (onshore application)

As part of Australia's RSD procedures, a person who arrives and seeks Australia's protection has their claims assessed on an individual basis against the Refugees Convention, with reference to up-to-date information on conditions in the applicant's home country. The assessment also takes into account Australia's international obligations under other relevant human rights treaties to which Australia is a party, namely the ICCPR and CAT.

The ICCPR and CAT provide that Australia must not forcibly return a person to a country where there are substantial grounds for believing that there is a real risk they would be subjected to significant harm as a necessary and foreseeable consequence of their return. A person will suffer significant harm if they will be subjected to the death penalty, be arbitrarily deprived of their life, or be subjected to torture or cruel, inhuman or degrading treatment or punishment.

People who are found to be owed protection are eligible for the grant of a Protection visa, providing they also satisfy health, character and security requirements. People who are found not to be owed Australia's protection, and have no lawful basis to remain in Australia, are expected to return to their country of origin or former habitual residence.

People granted a permanent Protection visa have the same access to government support services as other permanent residents in Australia and may be eligible for assistance under the HSS.

Temporary humanitarian visas

Subclass 449 Humanitarian Stay (Temporary) visa

The subclass 449 visa (also known as a 'safe haven' visa) is intended to allow for entry and temporary stay in Australia in humanitarian crisis situations. Individuals must be in grave fear for their personal safety because of circumstances that led to their displacement from their place of residence. Subclass 449 visas are granted on the understanding that the visa holder will return to their home country when it is considered safe to do so.

A person cannot apply for a subclass 449 visa in the usual way – that is, they cannot initiate an application themselves. Application is only by acceptance of an offer made by the Minister for Immigration, who determines the length of stay. Applicants must meet relevant security, character and health requirements, although the health requirement may be completed onshore, if necessary.

Subclass 449 visa holders do not have access to mainstream Commonwealth health care or income support. Holders cannot sponsor or propose relatives to Australia, nor may they re enter the country if they leave. Subclass 449 visa holders are prevented from applying for any visa (apart from another subclass 449 visa) by section 91K of the *Migration Act 1958*, unless the Minister for Immigration (the Minister) agrees to lift the application bar. Subclass 449 visas are not counted under the Humanitarian Program (or the Migration Program).

Subclass 786 Temporary (Humanitarian Concern) visa

Created in July 2000, the subclass 786 visa has mainly been granted to members of former 'safe haven' visa caseloads, some of whom were unable to return home because they required ongoing medical treatment and/or torture and trauma counselling.

Subclass 786 visas are typically granted to persons who hold a subclass 449 visa in Australia and if the Minister for Immigration considers there are humanitarian reasons for allowing the person further stay.

Subclass 786 visa holders are eligible to apply for Medicare and Centrelink benefits, access public education for children, English as a second language training and have full work rights. Holders cannot sponsor or propose any relatives to Australia nor does this visa have any travel rights. The Minister determines the length of stay, up to a maximum of three years. Subclass 786 visa grants are counted against the Humanitarian Program.

Humanitarian Program outcomes

Table 8: Grants by Program component 1996–97 to 2011–12

Program Year	Refugee grants	SHP grants	SAC grants	Sub-total offshore grants	Sub-total onshore grants	Offshore (per cent)	Onshore (per cent)	**Total grants**
1996–97	3,334	2,470	3,848	9,652	2,250	81.1	18.9	**11,902**
1997–98	4,010	4,636	1,821	10,467	1,588	86.8	13.2	**12,055**
1998–99	3,988	4,348	1,190	9,526	1,830	83.9	16.1	**11,356**
1999–00	3,802	3,051	649	7,502	2,458	75.3	24.7	**9,960**
2000–01	3,997	3,116	879	7,992	5,741	58.2	41.8	**13,733**
2001–02	4,105	4,197	40	8,342	3,974	67.7	32.3	**12,316**
2002–03	3,996	7,212	0	11,208	911	92.5	7.5	**12,119**
2003–04	3,851	8,912	0	12,763	840	93.8	6.2	**13,603**
2004–05	5,289	6,684	0	11,973	1,015	92.2	7.8	**12,988**
2005–06	5,699	6,739	0	12,438	1,398	89.9	10.1	**13,836**
2006–07	5,924	5,157	0	11,081	1,821	85.9	14.1	**12,902**
2007–08	5,951	4,721	0	10,672	2,153	83.2	16.8	**12,825**
2008–09	6,446	4,471	0	10,917	2,497	81.4	18.6	**13,414**
2009–10	5,988	3,234	0	9,222	4,534	67.0	33.0	**13,756**
2010–11	5,998	2,973	0	8,971	4,828	65.0	35.0	**13,799**
2011–12	6,004	714	0	6,718	7,041	48.8	51.2	**13,759**

Source: DIAC received on 7 July 2012. Data prior to 2001–02 is based on published historical information. Data from 2001–02 onwards was provided on 30 June 2011 and may vary from previously published figures.

2011-12 Program outcomes

Australia's Humanitarian Program of 13,750 places was fully delivered in 2011-12. Included in the 13,759 visas granted in 2011-12 were 6,004 offshore refugee visas, following referral by UNHCR. The remaining 7,755 places went to onshore arrivals – by air and boat – and to the 714 SHP visas.

Under the offshore program, Australia resettled people from Myanmar, Iraq, Afghanistan, Bhutan and Ethiopia, along with other countries in the Middle East, Asia and Africa regions.

Of the offshore refugee component, 13.7 per cent were visas granted under the 'woman at risk' program, exceeding the target of 12 per cent. The program is for women and their dependents subject to persecution and who are particularly vulnerable.

There is pressure on Australia's Humanitarian Program on two fronts:

A. Reduced places for the SHP due to increased onshore Protection visa grants, particularly for people who arrived as IMAs.

B. Within the SHP, demand by Protection visa holders who arrived as IMAs to reunite with their immediate ('split') family.

As noted, there were only 714 SHP visas granted in the 2011-12 Program, which was the smallest SHP intake since its inception in the early 1980s. There is currently a backlog of 20,000 undecided applications of which the majority are immediate or 'split' family members of Protection visa holders. There are very few places now available for other (not immediate) family members, particularly from non-IMA communities in Australia. All SHP applicants face a wait of many years.

As at 1 August 2012, there were 13,509 onshore applicants and IMAs awaiting a Protection visa outcome. Based on current finally determined grant rates (Attachment 5, Table 15), it is estimated around 12,000 applicants will be granted a Protection visa in the 2012-2013 program year.

Figure 15: Australia's Humanitarian Program – percentage of offshore and onshore places
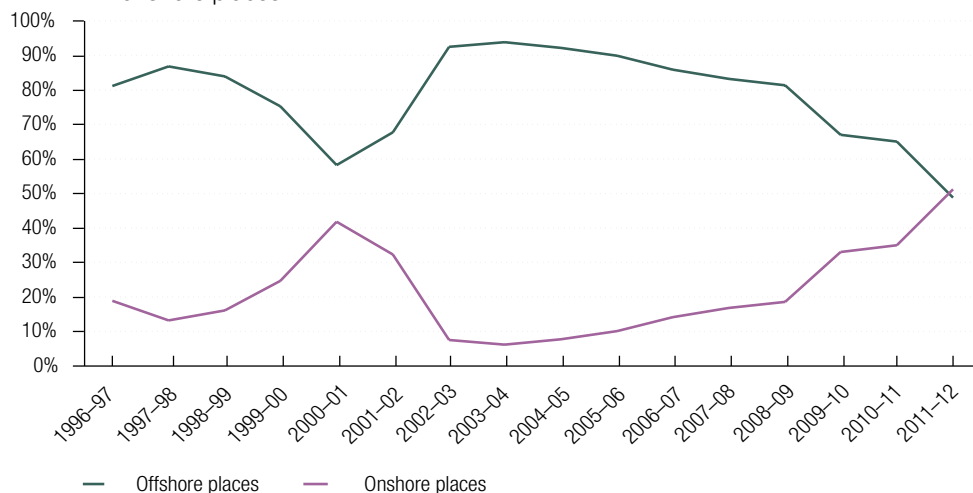
Source: DIAC, Data received on 7 July 2012.

Historical approaches

Safe Haven visas

In 1999, subclass 448 (Kosovar Safe Haven) visas were granted to almost 4000 displaced Kosovars who were in desperate need of assistance because of conflict in their home region. Safe Haven centres were established at military barracks throughout Australia. At these centres a range of services were provided including medical and dental treatment, educational and recreational activities, language services and specialised torture and trauma counselling.

Also in 1999, the Humanitarian Stay (Temporary) subclass 449 visa was initially introduced in response to the humanitarian crisis in East Timor. Almost 2,000 visas were granted to East Timorese who were identified as needing Australia's assistance. More recently, this visa has been used to provide temporary stay to 54 East Timorese in May 2006.

Temporary Protection visas (TPVs)

TPVs were introduced by the Howard Government in October 1999 in response to a surge in individuals using people smugglers to travel to Australia without authorisation. TPV arrangements were intended to reduce incentives for people to bypass or abandon effective protection in other countries.

Under the arrangements, unauthorised arrivals who were found to be refugees had access to a three-year visa only, after which their need for protection was reassessed. TPV holders had access to medical and welfare services, but had reduced access to settlement services, no access to family reunion and no travel rights. If a person who held a TPV left Australia their visa ceased and they had no right of return.

In 2001, legislative changes were introduced to provide that a TPV holder would be ineligible for a permanent Protection visa if, en route to Australia, they resided in a country for seven or more days where they could have sought and obtained effective protection.

The rule proved difficult to interpret and apply because of questions about what 'resided' meant and also as to what was meant by 'could have sought and obtained effective protection'.

TPV grants from inception to abolition (1999-2007) was 11,206.[86] Of the 11,206 people granted a TPV, 9,043 were irregular maritime arrivals.[87] Of this number 8,600 (95 per cent) were eventually granted a permanent visa in Australia.[88] The Rudd Government abolished TPV arrangements in 2008, including repealing relevant regulations.

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86   'IMAs – An Historical Study: 1990 to 30 June 2008', *DIAC*.

87   Ibid

88   Ibid

Special Assistance Category (SAC) visas

In the 1990s, there was ongoing community support for aiding other ethnic groups with close links to Australia whose lives were severely affected by conflicts in their countries, but who did not meet the traditional humanitarian resettlement criteria. The Government's response was the introduction of the SAC in April 1991. Overall, ten SACs were introduced. These included the following groups:

- Soviet minorities
- East Timorese living in Portugal, Mozambique or Macau
- citizens of the former Yugoslavia
- Burmese
- Vietnamese
- Cambodians
- Sri Lankans
- Sudanese

The major growth in the SAC program occurred after the SAC for citizens of the former Yugoslavia was introduced. In 1995-96, SACs provided visas to 6,910 people and more than half of the Humanitarian Program comprised either SAC or onshore protection grants. A review of the SAC program in 1996 determined that all the categories would be gradually brought to a close by the end of 2001.

ATTACHMENT 5: ASYLUM CASELOADS AND RSD RATES IN AUSTRALIA AND GLOBALLY

1. Australian context

Table 9: IMAs and air arrivals[89] in Australia

		98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	TOTAL
IMAs	Total vessels	42	75	54	17	1	2	0	6	3	3	23	117	89	111	32*	575
	Total people, including:	919	4,175	4,137	3,049	1	68	0	57	96	25	980	5,315	4,700	8,092	1,798	33,412
	Afghanistan	92	1,270	2,250	1,121	0	0	0	3	0	0	574	2,990	1,309	3,384	367	13,360
	Iraq	120	2,253	1,012	1,521	0	0	0	0	0	0	67	374	471	402	71	6,291
	Iran	0	230	517	115	0	0	0	0	0	0	20	358	1,643	1,425	312	4,620
	Sri Lanka	21	32	59	178	0	0	0	0	83	0	291	770	242	1,356	712	3,744
	Stateless**	0	19	132	32	1	0	0	1	0	0	18	578	724	660	205	2,370
	Other	686	371	167	82	0	68	0	53	13	25	10	245	311	865	131	3,027
Air arrivals	Total people, including:	8,077	8,141	8,861	7,026	4,960	3,485	3,062	3,191	3,723	3,987	5,072	5,986	6,337	7,036	554***	79,498
	China (PRC)	1,003	1,040	1,212	1,232	1,011	753	918	964	1,040	1,252	1,188	1,293	1,124	1,216	107	15,353
	India	373	699	652	647	609	404	167	302	378	194	353	301	556	906	87	6,628
	Indonesia	1,850	679	953	840	359	191	137	208	182	219	211	178	196	133	5	6,341
	Sri Lanka	424	430	408	303	150	122	289	209	460	397	478	328	160	137	9	4,304
	Fiji	127	395	927	479	242	131	62	34	78	44	116	564	331	271	14	3,815
	Other	4,300	4,898	4,709	3,525	2,589	1,884	1,489	1,474	1,585	1,881	2,726	3,322	3,970	4,373	332	43,057

Source: DIAC, consolidated on 6 August 2012.

* *All IMA statistics for 2012-13 refer to the period up to 31 July 2012.*

** *Includes Rohingya, Palestinians and Faili Kurds.*

*** *All air arrivals statistics for 2012-13 refer to the period Up to 27 July 2012.*

89   Data on air arrivals is not confined to those persons who sought protection immediately upon arrival at an Australian airport but includes all persons who arrived in Australia lawfully on a visa (e.g. tourists, students and other temporary entrants) and applied for a Protection visa at a later date.

Table 10: IMAs by age

	2008-09		2009-10		2010-11		2011-12	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
0-17 years	78	8	740	13	1,082	22	1,603	19
18+ years	955	92	4,875	87	3,828	78	6,716	81
Total	1,033	100	5,615	100	4,910	100	8,319	100

Source: DIAC, received on 26 July 2012. Data includes crew and is based on vessel interception date not arrival date.

Table 11: IMAs by sex

	2008-09		2009-10		2010-11		2011-12	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
Female	47	5	402	7	866	18	837	10
Male	986	95	5,213	93	4,044	82	7,482	90
Total	1,033	100	5,615	100	4,910	100	8,319	100

Source: DIAC, received on 26 July 2012. Data includes crew and is based on vessel interception date not arrival date.

Table 12: IMAs by familial status

	2008-09		2009-10		2010-11		2011-12	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
Individuals who arrived as part of a family group	129	12	962	17	1,880	38	1,708	21
Single adult males	860	83	4,196	75	2,535	52	5,659	68
Single adult females	3	0	25	0	25	1	74	1
Unaccompanied minors	41	4	432	8	470	10	889	11
Total	1,033	100	5,615	100	4,910	100	8,319	100

Source: DIAC, received on 26 July 2012. Data includes crew and is based on vessel interception date not arrival date. Figures rounded to nearest per cent.

Figure 16: Key IMA caseloads in Australia
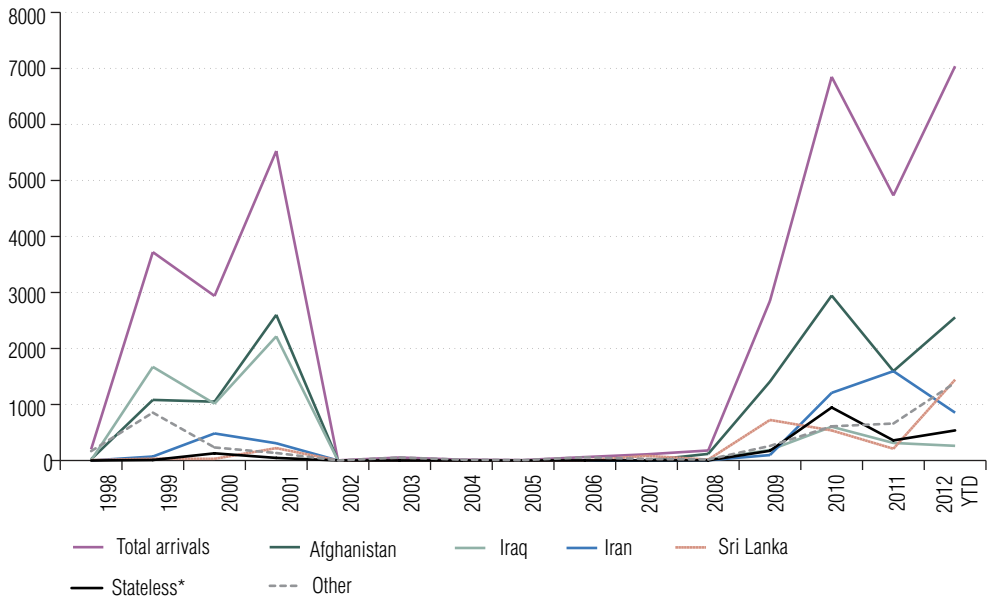
Source: DIAC.
* Includes Rohingyas, Palestinians and Faili Kurds.

Figure 17: IMAs by familial status
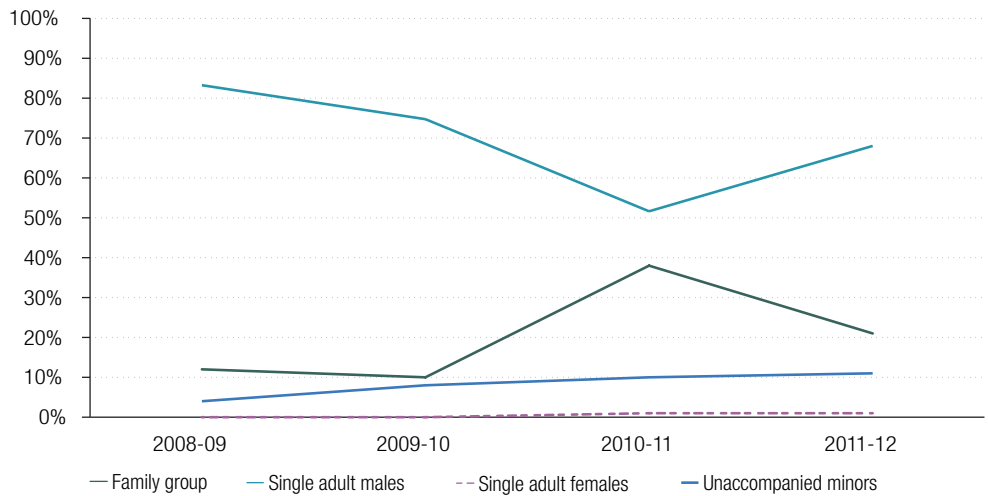
Source: DIAC.

Refugee Status Determination (RSD) rates for IMAs

Australian RSD rates set out in this attachment are visa grant rates rather than recognition rates, because recorded dates in systems for visa grants are more reliable than recorded dates for recognition that a person is in need of protection. A difference between the two rates can arise if the flow of positive RSD decisions and grants is uneven. The actual determination that a person is a refugee or is owed protection may occur in a different period to visa grant. The effect of this is strongest for the IMA caseload which has a more uneven profile (in terms of the flow of decisions and health, security or character checks) compared with the non-IMA caseload. In general, the effect disappears if rates are calculated for periods of six months or greater.

Variance in primary grant rates over time may reflect:

- changes to the composition of the asylum caseload;
- the changing nature of claims put forward by asylum seekers;
- changes in information on country conditions; and
- provision of country specific guidance notes to assist decision makers to make better informed decisions.

The overturn of negative primary decisions at the review stage may be explained by a range of factors, including:

- more detailed information on protection claims or new claims submitted at review;
- changing circumstances in countries of origin in the time between a primary decision and review assessment;
- different assessments by reviewers on:
    - the credibility of a person's claims;
    - whether internal relocation in the applicant's home country is practical and reasonable; and
    - country information.

In the following tables:

* indicates that less than 50 cases decided for this cohort in the given period.

All data provided by DIAC unless otherwise stated.

RSD rates for IMAs

Table 13: Primary Protection visa grant rates for key IMA caseloads by nationality[90] (per cent)

	1999-00	2000-01	2001-02	2002-03	2008-09	2009-10	2010-11	2011-12
All	**78**	**78**	**80**	**13**	**100**	**74**	**38**	**71**
Afghanistan	96	84	80	0*	100	78	38	84
Sri Lanka	77*	42*	67*	0*	100*	77	47	70
Stateless	50*	22	68*	0*	100*	67	43	72
Iraq	77	92	90	47*	100*	60	41	76
Iran	12*	25	43	0*	100*	52	28	61

Table 14: Review overturn rates for key IMA caseloads by nationality[91] (per cent)

	1999-00	2000-01	2001-02	2002-03	2008-09	2009-10	2010-11	2011-12
All	**46**	**51**	**58**	**40**	#	**66**	**83**	**82**
Afghanistan	70*	77	73	43*	#	#	87	90
Sri Lanka	100*	56*	46*	12*	#	#	70	82
Stateless	100*	25	18*	71*	#	#	84	82
Iraq	57	81	94	100*	#	#	75	75
Iran	11*	29	21	52*	#	#	79	79

There were no review outcomes in 2008-09, and only 83 review outcomes in 2009-10.

Table 15: Finally determined rates for key IMA caseloads in Australia[92] (per cent)

	1999-00	2000-01	2001-02	2002-03	2008-09	2009-10	2010-11	2011-12
All	**90**	**91**	**89**	**50**	**100**	**98**	**88**	**88**
Afghanistan	99	98	94	50	100	100	94	96
Sri Lanka	100*	82*	76	12*	100*	90	90	87
Stateless	100*	45	51	75*	100*	100	95	90
Iraq	98	98	91	89*	100*	94	92	86
Iran	27*	48	51	58*	100*	97	95	88

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90   A primary Protection visa grant is defined as a Protection visa granted to an irregular maritime arrival following a positive RSD made by a DIAC delegate.

91   The overturn rate for IMAs is a percentage of positive review recommendations on IMA refugee status as a proportion of the total number of review recommendations during the period.

92   The finally determined rate for IMAs is a measure of the Protection visas granted to IMAs as a proportion of all decisions made on refugee status in a specified period by a departmental delegate or following merits review.

RSD rates – non-IMAs

Table 16A: Primary Protection visa grant rates for non-IMAs by top 5 countries of citizenship[93] (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
All	**25**	**35**	**35**	**36**	**25**	**25**
Iran	56	76	80	88	78	70
Pakistan	45	64	66	72	54	40
China (PRC)	12	17	15	20	11	10
Zimbabwe	45	52	76	74	50	36
Egypt	38	58	42	46	29	23

Table 16B: Primary Protection visa grant rates for non-IMAs by selected nationalities (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
All	**25**	**35**	**35**	**36**	**25**	**25**
Afghanistan	100*	90*	92*	86	68	72
Sri Lanka	74	88	80	68	46	52
Stateless	50*	50*	67*	74*	44*	71*
Iraq	93	97	88	91	67	78
Iran	56	76	80	88	78	70

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93   Primary Protection visa grant rates are an expression of visa grants at the initial processing stage as a percentage of all primary decisions (grants and refusals) made in a given period. Top five countries are based on 2010-11 program year primary grants.

Table 17A: Refugee Review Tribunal set aside rates by top 5 countries of citizenship[94] (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
China (PRC)	22	22	21	27	22	17
India	6	5	4	6	7	6
Egypt	N/A#	24	31	52	36	61
Pakistan	20	24	17	42	36	50
Nepal	16	N/A#	27	33	16	9
Avg. for all nationalities	**22**	**18**	**19**	**24**	**24**	**27**

Source: Migration Review Tribunal / Refugee Review Tribunal website: http://www.mrt-rrt.gov.au/

Information not available as nationals from this country were not in the top ten lodgements for the given year.

Table 17B: Refugee Review Tribunal set aside rates by selected nationalities (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Afghanistan	69*	50*	No cases	50*	73*	75*
Sri Lanka	49	31	38	32	59	28
Stateless	0*	0*	33*	No cases	33*	90*
Iraq	100*	60*	63*	55*	93*	82*
Iran	63*	53*	38*	80*	76	80
Avg. for all nationalities	**22**	**18**	**19**	**24**	**24**	**27**

Source: Refugee Review Tribunal.

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94   The Refugee Review Tribunal sets aside a decision when it substitutes a new decision in place of the primary (negative) decision. Top five caseloads are based on 2011-12 lodgements.

Table 18A: Final Protection visa grant rates for non-IMAs by top 5 countries of citizenship[95] (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Iran	81	92	89	98	96	94
China (PRC)	31	38	32	42	30	27
Pakistan	50	73	77	85	80	74
Zimbabwe	100	80	90	86	77	66
Egypt	71	63	56	72	67	66
Avg. for all nationalities	**39**	**47**	**42**	**51**	**43**	**44**

Table 18B: Final Protection visa grant rates for non-IMAs by selected nationalities (per cent)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Afghanistan	100*	100*	100*	100	79	92
Sri Lanka	82	91	90	76	78	64
Stateless	100*	100*	100*	100*	76*	91*
Iraq	100	97	96	96	95	96
Iran	81	92	89	98	96	94
Avg. for all nationalities	**39**	**47**	**42**	**51**	**43**	**44**

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95 Final Protection visa grant rates are an expression of visa grants at the final processing stage as a percentage of all decisions (grants and refusals) made in a given period. Top five countries are based on 2010-11 program year final grants.

2. Persons of concern in the Middle East and South-East Asia regions

Table 19: Total Persons of Concern to UNHCR in selected territory/country of asylum by calendar year [96]

	2006	2007	2008	2009	2010	2011
Iran	969,492	964,743	981,911	1,072,346	1,075,163	886,914
Pakistan	1,047,141	2,038,154	1,939,700	4,744,098	4,041,642	2,781,067
Thailand	151,829	139,127	3,625,510	3,615,552	649,430	608,807
Malaysia	107,670	140,824	147,312	177,734	212,856	217,618
Indonesia	566	526	726	2,878	2,882	4,239

Source: UNHCR Statistical Yearbooks 2006 to 2010; UNHCR Global Trends Report 2011.

The composition of the asylum caseloads in these countries is:[97]

- Iran – Afghan (96 per cent) and Iraq (4 per cent)
- Pakistan – Afghan (99.9 per cent)
- Thailand – Stateless/Myanmar (99 per cent)
- Malaysia – Stateless/Myanmar (92 per cent), Sri Lanka (5 per cent)
- Indonesia – Afghan (67 per cent), Iranian (10 per cent), Somali (7 per cent)

Table 20: UNHCR RSD rates for 2011 in Malaysia and Indonesia

	Malaysia		Indonesia	
	No. of decisions	RSD rate (per cent)	No. of decisions	RSD rate (per cent)
Afghans	8	75	1,676	97
Iranians	92	75	275	94
Iraqis	160	100	461	89
Sri Lankans	553	24	145	98
All nationalities	**16,707**	**90**	**2,890**	**96**

Source: UNHCR 2011 Global Trends Report.

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96 UNHCR identifies seven population categories, collectively referred to as 'persons of concern': (1) refugees; (2) asylum-seekers; (3) internally displaced persons; (4) refugees who have returned home (returnees); (5) IDPs who have returned home; (6) stateless persons; and (7) other people who do not fall under any of the above categories but to whom the Office extends protection. In 2007, two sub-categories were introduced: (a) people in refugee-like situations (included under refugees); and (b) people in IDP-like situations (included under IDPs).

97 'Country Operations Fact Sheets', *UNHCR Bureau for Asia and the Pacific*, February 2012; and *UNHCR Global Appeal* 2012-13.

3. Global situation

According to UNHCR, an estimated 441,300 asylum applications were registered in 2011 in the 44 industrialised countries including Australia.[98] The 2011 level is a 20 per cent increase on 2010 figures (368,000) and the highest number of asylum applications since 2003, when 505,000 were lodged in the industrialised countries.

Australia received 11,510 asylum applications in 2011, which was a 9 per cent decrease on 2010 (12,640 applications). By comparison, the US (with 74,020 applications in 2011) had an increase of 25 per cent on 2010 (55,530 applications) and the EU (with 277,400 applications in 2011) had an increase of 15 per cent on 2010 (240,400 applications).

Table 21: Asylum applications in selected industrialised countries by calendar year

	2007	2008	2009	2010	2011
Australia	3,980	4,770	7,420	12,640	11,510
Canada	28,340	36,900	33,250	23,160	25,350
France	29,390	35,400	42,120	48,070	51,910
Germany	19,160	22,090	27,650	41,330	45,740
Greece	25,110	19,880	15,930	10,270	9,310
Japan	820	1,600	1,390	1,200	1,870
NZ	250	250	340	340	310
South Korea	720	360	320	430	1,010
Sweden	36,370	24,350	24,190	31,820	29,650
UK	28,300	31,320	30,670	22,640	25,420
US	50,720	49,560	49,020	55,530	74,020
Total for all 44 industrialised countries	**334,480**	**377,130**	**379,570**	**368,010**	**441,260**

Source: UNHCR, 'Asylum Levels and Trends in Industrialized Countries', 2011.

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98   *UNHCR Asylum Levels and Trends in Industrialized Countries*, 2011.

Figure 18: Asylum applications in selected industrialised countries by calendar year
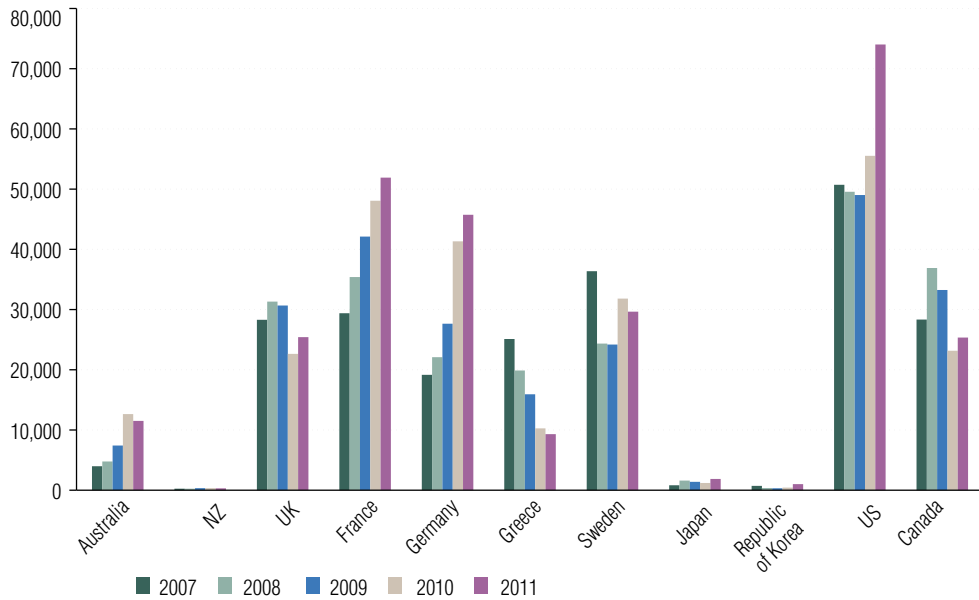
Source: UNHCR, 'Asylum Levels and Trends in Industrialized Countries', 2011.

Figure 19: Asylum applications in industrialised countries, 2011

AUSTRALIA 2.5%

■ 44 industrialised countries, including USA, UK, France, Germany and Canada
■ Australia

Nature of caseloads and RSD rates in other countries

Table 22: Comparison of composition of top three asylum caseloads in Canada, UK, USA and Australia

	Canada	UK	USA	Australia (IMA/non-IMA)	Australia (IMA only)
2011	Hungary	Pakistan	China	Iran	Afghanistan
	China	Iran	Mexico	Afghanistan	Iran
	Colombia	Sri Lanka	Guatemala	China	Sri Lanka
2010	Hungary	Iran	China	Afghanistan	Iran
	China	Pakistan	Mexico	Iran	Afghanistan
	Colombia	Zimbabwe	Guatemala	China	Stateless
2009	Mexico	Zimbabwe	China	Afghanistan	Afghanistan
	Hungary	Afghanistan	Mexico	China	Sri Lanka
	China	Iran	El Salvador	Sri Lanka	Stateless
2008	Mexico	Zimbabwe	China	China	Afghanistan
	Haiti	Afghanistan	Mexico	Sri Lanka	Sri Lanka
	Colombia	Iran	El Salvador	India	Iraq

Source: Intergovernmental Consultations on Asylum, Migration and Refugees (IGC). Caseloads are in descending order.

Table 23: First instance asylum rate for selected industrialised countries

Receiving country	2008 (per cent)	2009 (per cent)	2010 (per cent)	2011 (per cent)
Australia*	32	39	26	41
Canada	42	42	38	38
France	16	11	11	8
Germany	35	28	16	16
Greece	Not available	0	3	2
New Zealand	36	23	22	3
Norway	11	11	18	27
Sweden	5	5	6	8
United Kingdom	21	19	17	25
United States	24	30	32	32

Source: IGC.

*Australian figures reflect decisions on both IMA and non-IMA applications.

It is common for RSD rates to vary internationally with variations shifting over time and relative to the caseload cohorts. Disparities in global refugee rates reflect a variety of factors, including:

- different characteristics of asylum seeker caseloads and claims presented;
    - countries may receive asylum seekers from different ethnic groups of the same nationality who have varying claims for protection. For example Pashtun and Hazaras from Afghanistan, and Sinhalese and Tamils from Sri Lanka;
- other alternatives provided to asylum seekers including humanitarian or compassionate visas and subsidiary protection arrangements that don't appear in refugee recognition data;
- explicit policy directions in other countries on how to assess claims; and
- different characteristics of asylum caseloads based on the method of seeking asylum
    - for example, IMAs in Australia who make immediate requests for asylum generally have a higher RSD rate compared to students who arrive lawfully and later apply for a Protection visa after an extended period of time in Australia.

United Kingdom

The caseloads in the UK and Australia, while similar in terms of nationality, vary significantly in profile. For example, the UK receives Sinhalese as well as Tamils from Sri Lanka, and Pashtun as well as Hazaras from Afghanistan and Pakistan. The UK does not receive spontaneous boat arrivals, however it does receive irregular, undocumented arrivals. The more recent UK Sri Lankan asylum caseload (2011-12) is more similar to the Australian non-IMA Peoples Republic of China cohort, as a larger proportion of recent asylum seekers lodged onshore following periods of being on a student visa.

Lower overall RSD rates for certain nationalities in the UK compared to Australia partly reflects different caseloads, however the UK's processes also have an impact. The UK adopts a targeted range of restrictions on appeals, including deadlines to appeal, some limitations on who can appeal, how many times an individual can appeal and access to free legal representation.

USA

Lower RSD rates in the USA compared to Australia may be attributed to the large proportion of asylum seekers in the USA originating from Central and South America, which are not traditionally refugee producing regions. Around 18 per cent of all individuals granted asylum from 2002 to 2011 in the USA were Chinese nationals, the most of any nationality in the USA.[99] The RSD rate for Chinese applicants in the USA has ranged from 24 per cent to 30 per cent since 2007.

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99   'Yearbook of Immigration Statistics 2011', *US Department of Homeland Security, 2011.*

European Union (EU)

In the EU in calendar year 2011, of the nearly 240,000 first instance decision on asylum applications, around 12 per cent were granted refugee status.[100] Afghans, Iraqis and Somalis were the largest groups granted protection in 2011.

Figure 20: First instance approval rates for selected industrialised countries (per cent)
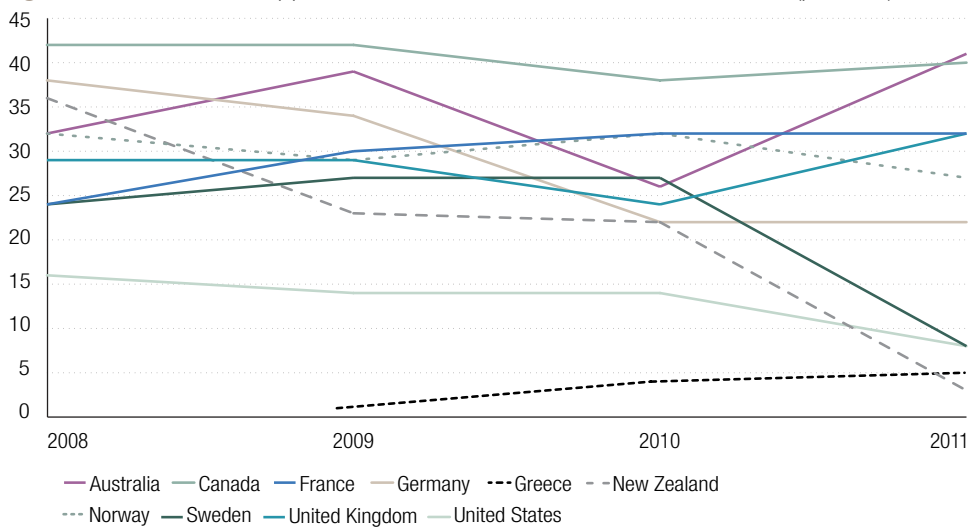
Source: IGC.

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100   'Asylum decisions in the EU27 - EU member states granted protection to 84,100 asylum seekers in 2011', *Eurostat*, 96/2012, viewed 19 June 2012, http//epp.eurostatec.europa.eu.

ATTACHMENT 6: AUSTRALIA'S INTERNATIONAL AND REGIONAL ENGAGEMENT ON IRREGULAR MOVEMENT AND INTERNATIONAL PROTECTION

Overview

Australia engages closely with partner countries throughout the region on irregular movement and international protection. This engagement takes places in regional multilateral fora, such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, the annual ASEAN Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs + Australia Consultation and the Pacific Immigration Directors' Conference. It also takes place directly through a series of institutionalised bilateral arrangements. Through these bilateral arrangements, Australia provides considerable technical and development assistance to boost the capacity of partner governments to respond to irregular movements, provide international protection to refugees and asylum seekers, and stabilise vulnerable populations. Australia also engages with key organisations in the region, including the UNHCR and the IOM.

Regional multilateral fora

Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process)

The Bali Process is a voluntary, non-binding forum for strengthening cooperation on people smuggling, trafficking in persons and transnational crime in the Asia Pacific region and beyond. The Bali Process aims to increase regional awareness of the consequences of people smuggling, trafficking in persons and transnational crime and improve coordination and cooperation on such issues.[101]

The Bali Process is co-chaired by Australia and Indonesia. There are 46 members including international organisations that participate in the forum.[102] There are also a number of other

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101   See www.baliprocess.net.

102   Afghanistan, Australia, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, DPR Korea, Fiji, France (New Caledonia), Hong Kong SAR, India, Indonesia, Iran, Iraq, Japan, Jordan, Kiribati, Lao PDR, Macau SAR, Malaysia, Maldives, Mongolia, Myanmar, Nauru, Nepal, New Zealand, Pakistan, Palau, PNG, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syria, Thailand, Timor-Leste, Tonga, Turkey, United States of America, Vanuatu, Viet Nam, IOM, and UNHCR.

countries and organisations which have observer status.[103] The Bali Process Steering Group comprises Australia and Indonesia as Co-Chairs, Thailand and New Zealand as coordinators and UNHCR and IOM providing expert input. It provides overall direction and coordination for the Bali Process.

Regional Cooperation Framework

The fourth Bali Process Ministerial Conference in 2011 agreed to establish a Regional Cooperation Framework (RCF). The framework recognises the need for burden sharing and cooperation between source, transit and destination countries. It provides a framework for interested Bali Process members to establish practical arrangements aimed at ensuring consistent processing of asylum claims, durable solutions for refugees, the sustainable return of those found not to be owed protection and targeting people smuggling enterprises. Such arrangements can be made on a voluntary basis at a bilateral or sub-regional level.

The following core principles underpin the RCF:

- Irregular movement facilitated by people smuggling syndicates should be eliminated and States should promote and support opportunities for orderly migration.

- Where appropriate and possible, asylum seekers should have access to consistent assessment processes and arrangements, which might include a centre or centres, taking into account any existing sub-regional arrangements.

- Persons found to be refugees under those assessment processes should be provided with a durable solution, including voluntary repatriation, resettlement within and outside the region and, where appropriate, possible in-country solutions.

- Persons found not to be in need of protection should be returned, preferably on a voluntary basis, to their countries of origin, in safety and dignity. Returns should be sustainable and States should look to maximise opportunities for greater cooperation.

- People smuggling enterprises should be targeted through border security arrangements, law enforcement activities and disincentives for human trafficking and smuggling.

Practical arrangements developed under the RCF are to be guided by the following considerations:

- Arrangements should promote human life and dignity.

- Arrangements should seek to build capacity in the region to process mixed flows and where appropriate utilise available resources, such as those provided by international organisations.

- Arrangements should reflect the principles of burden sharing and collective responsibility, while respecting sovereignty and the national security of concerned States.

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103   Observer countries: Austria, Belgium, Canada, Denmark, European Commission, Finland, Germany, Italy, The Netherlands, Norway, Romania, Russian Federation, South Africa, Spain, Sweden, Switzerland, United Kingdom, United Arab Emirates. Participating agencies: ADB, APC, ICMPD, ICRC, IFRC, IGC, ILO, Interpol, UNDP, UNODC, World Bank.

- Arrangements should seek to address root causes of irregular movement and promote population stabilisation wherever possible.

- Arrangements should promote orderly, legal migration and provide appropriate opportunities for regular migration.

- Any arrangements should avoid creating pull factors to, or within, the region.

- Arrangements should seek to undermine the people smuggling model and create disincentives for irregular movement and may include, in appropriate circumstances, transfer and readmission.

- Arrangements should support and promote increased information exchange, while respecting confidentiality and upholding the privacy of affected persons.

Since the endorsement of the RCF, Bali Process members have agreed to establish the Regional Support Office (RSO) to support operationalisation of the framework. Australia and Malaysia also negotiated a Transfer and Resettlement Arrangement. This was to be augmented by a processing centre in PNG.

RSO

The RSO will provide a coordination point for States to share information, build capacity, exchange best practice and pool common resources to address irregular migration in the region including issues concerning asylum seekers, refugees, human trafficking and population displacement. Australia will contribute funding and expertise for an initial four year period.

The RSO will operate in Bangkok under the oversight and direction of the Bali Process co-chairs in consultation with IOM and UNHCR. It will be staffed by officials from UNHCR, IOM and several regional States including Australia. Four foundation projects for the RSO have been endorsed:

- A regional data management initiative.

- A voluntary repatriation capacity building and support project.

- A pilot study on information exchange and data analysis on irregular migration by sea.

- Organisation of a regional roundtable on irregular movements by sea.

Regional Immigration Liaison Officer Network (RILON) and other Bali Process activities

The RILON concept was established under the Bali Process as a way to facilitate information sharing on irregular movements within each source, transit and destination country. Each local RILON regularly brings together host country immigration and relevant agencies and foreign missions to share information on issues related to irregular movements of people through all borders, including travel documentation, visa issuance, and vulnerabilities at airports. So far, RILONs have been established in Bangkok, Canberra, Colombo, Kuala Lumpur and New Delhi.

One of the key ways the Bali Process delivers on its core objectives is through workshops. Bali Process workshops are usually developed at the request of the Bali Process Steering Group. Workshops provide a forum for information sharing and training. The target audience depends on the topic but is usually operational and middle management staff from appropriate agencies.

Association of Southeast Asian Nations (ASEAN)

The Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs (DGICM) is the highest forum for immigration matters within ASEAN. Following endorsement by the ASEAN Secretariat, Australia has a standing invitation to attend the DGICM through the ASEAN DGICM + Australia Consultation. Australia is the only non-ASEAN country to attend the DGICM.

The Consultation is the primary forum through which DIAC pursues its working-level border security agenda within ASEAN. In recent years, the Consultation has been used to secure management support for a wide range of practical initiatives across immigration intelligence analysis, impostor detection, investigations, training management and document examination.

Pacific Immigration Directors' Conference (PIDC)

The PIDC is a forum for the heads of immigration agencies of 23 administrations in the Pacific. Australia co-funds the PIDC with New Zealand and is a permanent member of its management board. The PIDC's objective is to promote cooperation aimed at strengthening members' territorial borders and the integrity of their entry systems.

Key partner organisations

UNHCR

UNHCR is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well being of refugees, but its ultimate goal is to help find durable outcomes that will allow refugees to rebuild their lives in dignity and peace. UNHCR is also responsible for supervising implementation of the the Refugees Convention and is a key UN agency in responding to humanitarian crises.

In **South-East Asia**, one of UNHCR's key priorities is to advocate for the rights of people of concern and for the adherence of South-East Asian States to international protection standards. UNHCR is very supportive of the RCF and has indicated a willingness to work with States to operationalise the Framework. UNHCR's focus is on the establishment of protection-sensitive responses to mixed flow situations, registration, access to asylum, RSD, and the promotion of alternative arrangements to the detention of people of concern to UNHCR.

In **Indonesia**, due to the absence of national refugee legislation and procedures, UNHCR is the primary provider of protection and assistance to refugees and asylum seekers, undertaking responsibility for registration, RSD and the search for durable outcomes. UNHCR is working to build national capacity to take on more asylum responsibilities.

In **Malaysia**, most of UNHCR's resources are dedicated to providing protection and finding outcomes for its urban refugees and asylum seekers, many of whom are Muslims from Myanmar's northern Rakhine State. UNHCR also conducts registration and RSD, monitors detention and works to secure the release of refugees.

In 2011, the **Australian** Government contributed a total of around $52.3 million to UNHCR. Of this total funding, the DIAC provided around $3.3 million in project funding, mostly through the Displaced Persons Program (DPP). The Australian Government through the Australian Agency for International Development (AusAID) has progressively increased its core contribution to UNHCR from $7.4 million in 2007 to $18 million announced in the 2011-12 budget. These increases reflect recognition of UNHCR as a key multilateral partner in Australia's humanitarian aid program and on international protection and resettlement.

IOM

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As the leading international organisation for migration, IOM acts with its partners in the international community to:

- assist in meeting the growing operational challenges of migration management;
- advance understanding of migration issues;
- encourage social and economic development through migration; and
- uphold the human dignity and well-being of migrants.

IOM provides a wide range of migration-related protection and assistance to migrants and States in order to facilitate and promote international cooperation on migration. IOM's work stretches across areas of prevention, interventions to manage caseloads, and the search for and implementation of solutions.

In coordination with UNHCR, resettlement country embassies and the Malaysian Government, IOM has facilitated the resettlement from **Malaysia** of over 20,600[104] refugees since 2005 to 11 countries. Departures for resettlement is projected to reach levels of 9,000 to 10,000 annually in coming years.

In **Indonesia**, IOM's activities focus on counter-trafficking, safe migration and building the capacity of Indonesia's law enforcement sector in the areas of migration and human rights. IOM works closely with the Indonesian and Australian authorities to support Indonesia's efforts to regulate the movement of irregular migrants through Indonesia. Under a Regional Cooperation Arrangement funded by Australia, IOM provides basic accommodation, medical care, an allowance for food, and counselling to irregular movers intercepted in Indonesia. IOM refers any persons seeking asylum to UNHCR.

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104 'Malaysia-Movement Assistance', *IOM Country Page – Malaysia*, viewed at 3 August 2012, http://www.iom.int/jahia/Jahia/activities/asia-and-oceania/east-and-south-east-asia/malaysia

Since 2007, IOM has been implementing the Reinforcing Management of Irregular Migration project. This project includes the detection and monitoring of patterns of irregular migration flows in Indonesia; raising awareness of irregular migration through information campaigns targeting both relevant government officials and local communities; and providing training to the relevant law enforcement officials at both local and provincial levels.

For the past five years, **Australia** has been one of the top ten contributors towards IOM projects. Australia contributed $882,550 towards the administrative costs of IOM for 2012 and in 2011 Australia has provided USD 56.3 million in earmarked voluntary contributions towards domestic, regional and global projects with IOM.

Key IOM services that Australia uses include:

- facilitated travel, including travel loans, medicals, and cultural orientation, for humanitarian visa recipients;
- capacity building projects and population stabilisation operations in the Asia Pacific and Middle East;
- research and policy discussion; and
- delivery of assisted voluntary return packages.

Australia's bilateral engagement in the region

Bilateral mechanisms for cooperation

Australia has established a number of bilateral agreements and working groups on immigration and border management issues with partner countries in the region.

- The **Malaysia**-Australia Working Group on People Smuggling and Trafficking in Persons focuses on border management, legal cooperation, maritime surveillance and interdiction, law enforcement and intelligence sharing. At the Malaysia Australia Immigration Cooperation Working Group senior officers discuss initiatives to enhance immigration cooperation.
- The **Pakistan**-Australia Joint Working Group on Border Management and Transnational Crime focuses on border management, law enforcement cooperation, and legal issues, and identifies areas for technical assistance.
- The Implementation Framework for Cooperation to Combat People Smuggling and Trafficking in Persons provides Australia and **Indonesia** with additional mechanisms to aid operational-level coordination and joint strategic oversight of bilateral cooperation. The Australia-Indonesia Working Group on Immigration Cooperation is the primary forum for engagement between DIAC and Indonesian Immigration.
- The **Afghanistan**-Australia Senior Officers Meeting discusses progress and outcomes under the Memorandum of Understanding on Migration Management (MOU) and Humanitarian Cooperation.
- The **India**-Australia Joint Working Group on Visas, Passports and Consular Matters provides a forum to discuss a range of regular and irregular migration issues.

- Through the Senior Officers Exchange Program, representatives of DIAC and **China's** Ministry of Public Security engage in talks on immigration issues.

- The **Iraq**-Australia Senior Officials Talks address issues under the MOU on Security and Border Control, which covers capacity building and document examination.

- The Australia-**Cambodia** Immigration Forum builds on bilateral cooperation under the MOU concerning Mutual Cooperation in Combating Irregular Migration, People Smuggling and Trafficking.

- The Australia-**PNG** Ministerial Immigration Forum enables discussion of migration management and border security issues.

Supporting regional responses

Australia provides support to countries throughout the region to strengthen their responses to irregular migration. This support ranges from technical training and operational equipment to development assistance to stabilise vulnerable populations in source and transit countries and is provided by a range of Australian Government agencies.

Australia's broad approach to national security acknowledges the contribution of our international development assistance program. The fundamental purpose of Australian aid is to help people overcome poverty. This also serves Australia's national interest by promoting stability in both Australia's region and beyond.

The majority of Australia's Overseas Development Assistance (ODA) is managed and delivered by the **AusAID**. Federal agencies other than AusAID are estimated to have delivered over 10 per cent of the aid program in 2011-12. By 2015-16 Australia's total ODA is estimated to reach $7.7 billion.

AFP's budget for people smuggling for 2011-12 was $16.9 million, which consisted of $4.6 million for the AFP's People Smuggling Strike Team and $12.3 million for capability and capacity building activities for law enforcement agencies in source and transit countries such as Indonesia, Malaysia, Pakistan and Sri Lanka.

The People Smuggling Strike Team supports regional operations led by local law enforcement agencies and conducts investigations in Australia and overseas in relation to people smuggling organisers, facilitators and crew.

In 2011-12, **DIAC** was allocated approximately $70 million for international engagement and capacity building activities related to people smuggling and border control:

- $47 million to support regional cooperation and build the capacity of source and transit countries

- $10 million for management and care of irregular migrants in Indonesia

- $7 million for initiatives to address the situation of displaced persons in, and promote sustainable returns to, source and transit countries

- $7 million for returns and reintegration assistance packages.

The **Attorney-General's Department** (AGD) has a budget for strengthening regional legal frameworks to combat people smuggling and transnational organised crime of $6.7 million over 2011-12 and 2012-13. AGD's integrated approach to building capacity with partner countries has three key pillars:

- Implementation of comprehensive anti-people smuggling laws – AGD works with partner countries to facilitate implementation of their international obligations in the People Smuggling Protocol under the UN Transnational Organised Crime Convention.

- International legal cooperation – AGD enhances countries' capacity to engage in effective international legal cooperation to ensure people smuggling prosecutions can be successfully mounted.

- Following the money – As organised crime, including people smuggling, is driven by profit, AGD's integrated approach includes helping countries 'follow the money' by strengthening anti money laundering and proceeds of crime laws.

The **ACBPS** budget for combating people smuggling for 2011-12 was over $8.3 million. This funded information collection and intelligence analysis; overseas liaison officers; and the provision of equipment, training and development to support counter people smuggling activities and cross jurisdictional cooperation.

In 2011-12 ACBPS supported regional law enforcement agencies' capacity to combat people smuggling through the gifting of operational equipment (for example to the Sri Lanka Coast Guard) and the delivery of targeted training and development programs.

ATTACHMENT 7: RETURNS AND REMOVALS OF PERSONS FOUND NOT TO ENGAGE AUSTRALIA'S PROTECTION OBLIGATIONS

Overview

The involuntary return of failed asylum seekers is an integral part of Australia's migration and border management regime. It is also fundamental to maintaining the integrity of a properly functioning international system of protection. Asylum seekers who have been found not to engage Australia's protection and have no lawful entitlement to remain in Australia are encouraged to depart voluntarily. IOM is funded to facilitate voluntary return by providing return support and reintegration assistance and counselling. Where people do not depart voluntarily and are ineligible for the grant of a Bridging visa, DIAC is required by law to detain and remove them from Australia as soon as reasonably practicable.

Once a person is considered to be available for removal, DIAC commences pre-removal planning processes (including pre-removal clearances and obtaining travel documents). Persons considered available for removal include: individuals who have completed all processes related to their protection claims including any related litigation; have requested removal; or are assessed on arrival as having no *prima facie* protection claims.

Where a person requests to be returned to their country of origin, the removal process can generally be completed within a relatively short period of time. However there are a number of complexities with effecting the involuntary return of persons who do not cooperate with their removal and have no lawful right to remain in Australia.

Involuntary removal is largely dependent on the person's and receiving country's cooperation and assistance with providing travel documents. Australia has a number of return arrangements in place to effect the voluntary and involuntary return of unlawful non-citizens. However, even with such arrangements in place, there are a number of impediments to involuntary removal which often cause delays. Throughout 2011-12, DIAC monitored, assisted or enforced the departure of 10,785 people (including on request and involuntarily). This represents a 6 per cent increase on the 10,175 departures in 2010-11.

Of the 10,785 departures[105] in 2011-12, a total of 50 were voluntary removals of IMAs, and two were involuntary removals of IMAs.

Since October 2008 to 3 August 2012, there have been a total of 287 removals of IMAs. Of these:

- 270 were voluntary removals; and
- 17 were involuntary removals.

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105   Departures include 'returns' from the community which are voluntary and 'removals' from detention which can be voluntary or involuntary.

Voluntary return/removal and involuntary removal

Voluntary return/removal

Given the difficulties with effecting involuntary removal, it is highly preferable that departures are voluntary wherever possible. Voluntary removal is also a safe and more dignified option. Persons in immigration detention can request their removal from Australia at any point in time. Policy measures have been put in place to encourage voluntary removal such as individual reintegration assistance (IRA) packages. The IRA package includes a cash component and in-kind assistance such as job placement support, vocational training, and small business start-up. Since the introduction of the IRA program in late 2010, a total of 122 packages have been taken up. DIAC provides funding to IOM to offer these packages.

Involuntary removal

Involuntary removals are difficult to effect without the person's cooperation and without the assistance of the receiving country. Some of the key issues and impediments to effecting involuntary return include obtaining travel documents and the prolonged processes before individuals become available for removal.

Obtaining travel documents

Obtaining travel documents requires establishment of the person's identity to a level sufficient to confirm nationality. The IMA caseload's lack of documentation and failure to cooperate with the removal process often means that establishing nationality and/or identity for the purpose of removal can be a complex and lengthy process. Removal is particularly difficult if countries of origin do not accept undocumented involuntary returns and do not assist with providing travel documents. To mitigate this, DIAC is actively pursuing policy measures to enable the re-documentation of IMAs and facilitate their involuntary removal. Such measures include:

- funding the identity document checking units in Afghanistan and Sri Lanka to confirm the identity of Afghan and Sri Lankan IMAs being removed;
- confirming identity through biometric data (fingerprints and facial images) checking against the databases of other countries and agencies; and
- establishing IMA status resolution identity teams to collect and test identity information to establish identity for removal purposes.

DIAC also pursues return arrangements with countries of origin to enable involuntary removal. For instance, the Australian Government signed an MOU with the Government of Afghanistan in January 2011 to facilitate the return (both voluntary and involuntary) of Afghan nationals. Involuntary removals of IMAs to countries such as Iraq and Iran have not been possible to date. DIAC has recently increased engagement with interlocutors from Iraq and Iran to progress the issue of involuntary removals.

Prolonged processes before becoming available for removal

Removal is often delayed as a result of protection claim processes including merits and judicial review. For instance, clients may lodge 'out of time' judicial review applications and make repeat requests for the Minister for Immigration and Citizenship (the Minister) to intervene using his special non-compellable public interest powers. There are also mechanisms at the international level for review of decisions with requests from the relevant United Nations body to stay removal pending their consideration of the case.

One impact of the November 2010 High Court challenge (*Plaintiff M61/2010E v Commonwealth of Australia & Ors and Plaintiff M69 of 2010 v Commonwealth of Australia & Ors*) is that IMAs now have access to judicial review of their independent merits review assessment. The effect of this has been that a vast majority of IMAs now seek judicial review.

Currently, scheduled and prospective involuntary removals are impeded by an impending High Court decision raising issues of procedural fairness under the Minister's personal intervention powers.

Australia's current IMA removal efforts

Between October 2008 and 3 August 2012 a total of 287 IMAs (not including crew members) were removed from Australia. Of the 287 removals over this period, 17 were involuntary removals. The remaining 270 were voluntary removals.

Of the 287 IMAs removed, 148 were persons found not to engage Australia's protection. The remainder either did not raise protection claims on arrival or whilst protection claims were pending sought voluntary removal.

As at 3 August 2012, 179 IMAs in detention or in the community on Bridging visas had no ongoing matters with DIAC or the courts. These persons are not cooperating with removal planning and DIAC is seeking travel documents or agreement of the country of return to facilitate removal. Of the 179, there were 49 Afghan; 2 Iraqi; 45 Iranian; 25 stateless; 28 Vietnamese; 18 Sri Lankan; 6 Pakistani; and 6 from other nationalities. The tables below provide IMA removal statistics (not including crew members) and non-IMA removals from 2008-2009 through to 2011-2012.

Table 24: Number of IMA removals from 1 July 2008 to 3 August 2012

Citizenship	IMA Removals by Citizenship												
	2008-09		2009-10		2010-11		2011-12		2012-13	
	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary
Afghanistan	0	0	0	1	0	5	0	2	0	3
Iran	0	0	0	2	0	45	0	33	0	0
Iraq	0	0	0	0	0	8	0	5	0	1
Pakistan	0	0	0	0	0	0	1	0	0	0
Sri Lanka*	0	11	15	59	0	0	0	2	0	0
Indonesia	0	2	0	60	0	0	0	0	0	0
India	0	0	0	1	1	0	0	0	0	0
Vietnam	0	0	0	0	0	20	0	8	0	1
United Kingdom#	0	0	0	1	0	0	1	0	0	0
Total	0	13	15	124	0	78	2	50	0	5
Total Onshore Removals	13		139		78		52		5	

Two Sri Lankans were returned involuntarily to PNG.

#Client was a dual Afghan/UK citizen returned to the UK

Table 25:   Number of onshore removals not including IMAs and Illegal Foreign Fishers (IFFs)

Citizenship	Onshore Removals by Citizenship (Does not include IMAs, Illegal Foreign Fishers and other unauthorised arrivals)							
	2008-09		2009-10		2010-11		2011-12	
	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary	Involuntary	Voluntary
Afghanistan	0	0	0	1	0	0	0	0
Iran	0	0	0	0	1	0	0	0
Iraq	0	0	0	0	0	0	0	2
Pakistan	0	7	0	6	4	11	0	13
Sri Lanka	0	8	3	4	1	5	3	11
Indonesia	1	50	1	68	2	55	2	67
India	1	30	2	43	7	86	3	155
Bangladesh	2	8	5	6	2	9	0	14
Vietnam	2	66	2	49	2	50	4	91
Asia - Other	26	621	61	603	51	711	38	1,024
Europe	6	83	12	72	8	64	10	114
Africa	1	19	7	11	7	21	7	17
Middle East - Other	1	6	5	6	0	12	1	5
The America's	4	28	2	22	5	36	2	47
Pacific Region	7	58	7	77	16	92	16	94
Not Recorded	4	71	2	0	0	12	0	35
Total	55	1,055	109	968	106	1,164	86	1,689
Total Onshore Removals	1,110		1,077		1,270		1,775	

International experience with removals

United Kingdom

Where possible, the UK returns unlawful non-citizens including failed asylum seekers to all countries. The UK uses a whole-of-government approach to negotiate better performance on returns, including through diplomatic means. The UK involuntarily returns undocumented persons to Sri Lanka and Afghanistan. Involuntary removals to Iraq are carried out on a case by case basis.[106] No countries have been able to effect involuntary removal to Iran of undocumented persons for some time. In 2011, the UK voluntarily and involuntarily removed a total of 1,081 Sri Lankans, 1,917 Afghans and 493 Iraqis. In the same period a total of 748 Iranians voluntarily departed the UK.[107] These figures include both asylum seekers and non-asylum seekers.

A direct comparison of UK and Australian statistics is complicated by the two countries' different caseloads, modalities of travel and migration processes. Taken by country of origin, the UK receives many of the same caseloads as Australia. But it often receives a different mix of ethnicities from within these countries. UK statistics also include a high number of air arrivals and irregular migrants who have arrived lawfully. Finally, the UK deals with more illegal workers than asylum seekers, most of whom retain documentation of some kind (which facilitates removal).

Canada

Canada sees the return of failed asylum seekers as a key priority that helps to protect the integrity of its immigration program. It has recently undertaken broader refugee reforms including changes to its legislative and removals process (such as increased capacity and funding for removals). The average timeframe in which an asylum claim is made and all recourses are exhausted and a failed asylum seeker is removed is currently four years, although in some extreme cases this has taken up to 10 years. Between 2009 and 2010, Canada removed a total of 74 Sri Lankans, 16 Afghans, 40 Iraqis and 38 Iranians to their countries of origin (including both voluntarily and involuntarily returns). These figures include non-asylum seekers, as well as failed asylum seekers.[108]

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106   Iraq recently announced that it will no longer accept the involuntary return of persons from Europe (including the UK) if that person does not hold a valid Iraqi travel document. See: 'Iraqi parliament refuses to accept nationals deported from Europe', *The Guardian*, 2 July 2012, viewed 3 August 2012, http://www.guardian.co.uk/world/2012/jul/02/iraq-parliament-deported-nationals-europe.

107   'Removals and voluntary departures', *UK Home Office,* 24 May 2012, viewed 3 August 2012, http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q1-2012/removals-q1-2012.

108   *Intergovernmental Consultations on Migration, Asylum and Refugees*, 2012.

Europe

Some European countries undertake involuntary return of failed asylum seekers from countries of origin such as Afghanistan, Pakistan, and Iraq (as well as a number of African nations). Sweden and Norway conducted involuntarily returns of Kurds and Iraqis to Iraq as late as February 2012,[109] while the UK conducted similar returns until 2011. However, Iraq has recently announced that it will no longer accept 'forcibly repatriated' asylum seekers from European countries, and is currently refusing to grant travel documents to Iraqis that don't want to return home.[110] Similar issues exist with involuntary returns to Iran from Europe.

Numerous European countries (such as the UK, France, the Netherlands, Germany, and Switzerland) also operate a Voluntary Assisted Return and Reintegration Program to encourage failed asylum seekers to return home voluntarily. Most of these programs involve some sort of reintegration package, monetary or otherwise. Switzerland, for example, has recently announced it will increase the reintegration assistance provided to 'particularly difficult cases' as a means of encouraging voluntary returns and avoiding forced returns of failed asylum seekers. In 2011, 9,641 asylum seekers were returned from Switzerland (165 of them involuntary removals through charter flights).[111]

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109   Sweden returned 49 Kurdish failed asylum seekers to Iraq in February 2012. A further group of 50 people were involuntarily returned to Iraq from Sweden and Norway in early 2012. See 'Kurdish asylum seekers at risk of deportation', *Rudaw*, 6 March 2012, viewed 6 August 2012, www.rudaw. net/english/news/iraq/4499.html.

110   'Iraq refugees can't be forced home', *The Copenhagen Post,* 6 July 2012, viewed 3 August 2012, http://www.cphpost.dk/news/national/iraq-refugees-can per centE2 per cent80 per cent99t-be-forced-home.

111   'Paying undesirables to leave Switzerland', *Swiss Info*, 26 April 2012, viewed 3 August 2012, http://www.swissinfo.ch/eng/swiss_news/Paying_undesirables_to_leave_Switzerland. html?cid=32562598.

ATTACHMENT 8: APPROACHES TO MANAGING IMAs TO AUSTRALIA

Introduction

Recent and historical discourse on measures to reduce the flow of IMAs to Australia has canvassed a range of options, including turning back suspected irregular entry vessels (SIEVs) from Australian waters and assessing asylum claims outside of Australia. The central policy rationale behind these approaches acknowledges that irregular dangerous boat movements should be discouraged for safety of life issues and border management reasons. However, this policy objective sits within the broader context of Australia's international obligations as a country of refuge. The difficulty in managing that balance has seen expression via a range of policy measures with varying degrees of success. The issues are complex and enduring, and will continue to be so.

Turning back SIEVs

Historical perspective

From 1999-2001, in response to a surge in the rate of boat arrivals, in combination with other policy responses, a number of turnbacks were attempted under an Australian Defence Force (ADF) led operation. From September to December 2001, twelve asylum seeker boats (designated SIEVs) were intercepted (either inside the Australian territorial sea or contiguous zone) with attempts to enforce the turnback policy on eight occasions.

This policy, as it was implemented in 2001, typically involved Royal Australian Navy (RAN) personnel boarding a SIEV and 'steaming' it back towards Indonesian waters. These operations often involved the transfer of some or all of the asylum seekers from the SIEV onto an escorting RAN vessel while it was being 'steamed' towards Indonesian waters.[112]

On four occasions, asylum-seeker boats were successfully intercepted and escorted or towed back to international waters in the direction of Indonesian territorial waters. Although successful, these four operations involved the following incidents:

- on two occasions, RAN personnel undertook repairs to the boat engines; and
- on two occasions, asylum seekers jumped overboard.

Of the remaining four attempts, the boats either sank or became unseaworthy at some point during the interception or turnback operation, or non-compliant behaviour of the asylum seekers made the attempt unsustainable. In these instances, asylum seekers were transported on board RAN vessels to Christmas Island.

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112 'Testimony of Vice Admiral Griggs, Chief of Navy', Supplementary Budget Estimates Hearings 2011, *Foreign Affairs, Defence and Trade Legislation Committee*, 19 October 2011, pp. 109-112.

Summary of pre-conditions for implementing turnbacks

The following principles for implementing turnbacks are based on international and domestic legal considerations, as well as diplomatic and operational considerations:

- The State to which the vessel is to be returned would need to consent to such a return.[113]

- Turning around a vessel outside Australia's territorial sea or contiguous zone (that is, in international waters), or 'steaming' a vessel intercepted and turned around in Australia's territorial sea or contiguous zone back through international waters could only be done under international law with the approval of the State in which the vessel is registered (the 'flag State').

- A decision to turn around a vessel would need to be made in accordance with Australian domestic law and international law, including *non-refoulement* obligations, and consider any legal responsibility Australia or operational personnel would have for the consequences to the individuals on board any vessel that was to be turned around.

- Turning around a vessel would need to be conducted consistently with Australia's obligations under the SOLAS Convention, particularly in relation to those on board the vessel, mindful also of the safety of those Australian officials or Defence Force personnel involved in any such operation.

Legal considerations

Australia has a 12 nautical mile territorial sea and an adjacent 12 nautical mile contiguous zone. Under Australian and international law, Australian authorities are permitted to take action in the contiguous zone to prevent breaches of Australian migration laws that have occurred, or may occur, in our territorial seas. This includes enforcement action against a vessel suspected of smuggling people to Australia, typically designated as SIEVs.

Although people smuggling vessels are sometimes identified some distance from Australia's contiguous zone (outside 24 nautical miles), there are only limited circumstances under which Border Protection Command (BPC) is able to board these vessels outside the contiguous zone (for example, a safety of life at sea – SOLAS – incident). Therefore, most people smuggling vessels are boarded within 24 nautical miles of Ashmore Islands or Christmas Island or other Australian land mass.

Assets assigned to BPC conduct law enforcement activities on behalf of other Australian Government agencies exercising powers under the *Customs Act 1901, Migration Act 1958*, and *Fisheries Management Act 1991.*

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113   This may be provided through acquiescence.

Diplomatic considerations

As noted, to effectively implement a turnback policy, it would be necessary to establish a bilateral agreement or understanding between Australia and the State in which the vessel is registered as well as the 'point of departure' State (which will often be the same). The most significant country in this regard is Indonesia, and such an agreement, should it be acceptable to Indonesia, would likely take some time to negotiate. Failure to obtain agreement from Indonesia (or another country of embarkation) could put significant pressure on the diplomatic relationship between Australia and Indonesia (or the relevant country), to the detriment of broader Australian interests.

Public statements by a number of senior Indonesian Government figures indicate that Indonesia's reaction to a turnback policy is likely to be negative.[114]

International obligations

In addition to the above, Australia would be required to adhere to its obligations under international law such as relevant human rights instruments to which Australia is a party, including the Refugees Convention. For example, before turning a boat around it would be necessary to ensure that such action would not result in asylum seekers on board being *refouled* by:

- returning them directly to a country from which they are seeking protection – this is a particular issue for vessels that have travelled directly from Sri Lanka; or

- being returned to the country of embarkation if there is a likelihood that they will be forcibly removed to a third country where they face a real risk of irreparable harm.

Operational considerations

Although the decision to implement a turnback policy resides with the government, at the operational level, the individual discretion to implement a SIEV turnback should reside with the Commanding Officers of the responding vessels acting in accordance with that policy. This provides appropriate flexibility for Commanding Officers to take account of their ongoing assessment of each individual situation, particularly regarding the state of the SIEV and those on board, in accordance with Australia's SOLAS obligations and mindful of the safety of all concerned. In addition, implementation of a turnback policy also needs to be mindful of the operational impacts on the ADF, particularly the availability of appropriate major fleet units.

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114 'Jakarta defiant over asylum boat towbacks', *The Australian*, 16 March 2012; 'Jakarta slams Abbott boat plan', *Sydney Morning Herald*, 24 January 2012; Australian Associated Press, 6 September 2011.

Regional and extraterritorial processing of asylum claims

Summary of principles for regional and extraterritorial processing

The following principles, which were established in March 2011 under the Bali Process RCF,[115] provide a basis for approaches to processing asylum claims in the region:

- Irregular movement facilitated by people smuggling syndicates should be eliminated and States should promote and support opportunities for orderly migration.

- Where appropriate and possible, asylum seekers should have access to consistent assessment processes, whether through a set of harmonised arrangements or through the possible establishment of regional assessment arrangements, which might include a centre or centres, taking into account any existing sub-regional arrangements.

- Persons found to be refugees under those assessment processes should be provided with a durable solution, including voluntary repatriation, resettlement within and outside the region and, where appropriate, possible 'in country' solutions.

- Persons found not to be in need of protection should be returned, preferably on a voluntary basis, to their countries of origin, in safety and dignity. Returns should be sustainable and States should look to maximise opportunities for greater cooperation.

- People smuggling enterprises should be targeted through border security arrangements, law enforcement activities and disincentives for human trafficking and smuggling.

In November 2010, UNHCR (a member of the Bali Process) also indicated that, while claims for international protection made by intercepted persons are in principle to be processed in procedures within the territory of the intercepting State, under certain circumstances, the processing of international protection claims outside the intercepting State could be an alternative to standard 'in-country' procedures. Notably, this could be the case when extraterritorial processing is used as part of a burden-sharing arrangement to more fairly distribute responsibilities and enhance available protection space.[116] In its Submission to the Panel, UNHCR have further emphasised that, in circumstances where RSD processing and the search for solutions takes place in a country other than in which an asylum seeker originally applies for asylum, it should be within the broader regional cooperation framework and:

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115 'Co-Chairs' Statement' *Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime,* 29-30 March 2011, viewed 26 July 2012, http://www.baliprocess.net/files/110330_FINAL_Ministerial_Co-chairs per cent20statement per cent20BRMC per cent20IV.doc.

116 'Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing*', UNHCR*, November 2010, viewed 26 July 2012, http://www.unhcr.org/refworld/docid/4cd12d3a2.html.

- be built on the shared ownership, commitment and active engagement of participating States and aim to build/strengthen State capacity based on the principle of mutual respect for the sovereignty of participating States;

- be based on principles of burden and responsibility sharing between States that share common concerns over irregular movements, while ensuring that such actions do not shift burdens or responsibilities or undermine existing international obligations;

- be based on full respect for humanitarian and human rights principles, including those enshrined in the Refugees Convention and other international human rights instruments;

- provide for the establishment of differentiated processes and procedures for various categories of people that ensure effective and fair access to asylum for those with claims for international protection while providing efficient and timely outcomes to others, including return as appropriate;

- address disparities in the standard of treatment for asylum seekers and refugees and ensure access to conditions of safety and dignity until a decision is made on their status and, in the case of those recognised as refugees, timely access to a durable solution; and

- respond to the criminal dimensions of people smuggling and trafficking without inadvertently penalising or discriminating against the victims of criminal enterprises or compromising the protection responsibilities that are owed to persons engaged in onward maritime movements under the Refugees Convention and other international human rights instruments.[117]

Australian legislative basis

Legislative amendments passed in 2001 to facilitate the 'Pacific Strategy' gave discretion to officers to detain people who they reasonably believed were seeking to unlawfully enter or had unlawfully entered excised offshore places, and to remove them to a declared country where their need for protection could be assessed. This allowed the asylum claims of IMAs to be assessed in Nauru and PNG's Manus Island.

The High Court of Australia considered the application of this legislation to the Malaysia Arrangement in *Plaintiff M70/2011 v MIAC*. The Court found the 2001 amendments reflected a legislative intention to give effect to Australia's obligations under the Refugees Convention, by only sending unprocessed asylum seekers to safe third countries. The effect of the decision is that the following circumstances must exist in order for the Minister for Immigration to validly declare a country under s.198A(3) of the *Migration Act 1958* (the Act) as a country to where asylum seekers may be taken for the purposes of extraterritorial processing:

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117   'UNHCR Submission to the Expert Panel on Asylum-Seekers', *UNHCR*, pp3–4 27 July 2012.

- The declared country must be legally bound, by international law or its own domestic laws, to:
    - provide access for asylum seekers to effective procedures for assessing their need for protection;
    - provide protection for asylum seekers pending determination of their refugee status; and
    - provide protection for persons given refugee status pending their voluntary return to their country of origin or their resettlement in another country.
- The country must additionally meet relevant human rights standards in providing that protection.

The 'procedures' for determining refugee status and the 'protections' referred to in s.198A(3)(a) of the Act are those provided for in the Refugees Convention (at least for those who have been assessed as refugees). The protections include, but are not limited to, *non-refoulement,* rights relating to education, the practice of religion, employment, housing, freedom of movement and free access to the courts.

International obligations

In order to fulfil its obligations under the Refugees Convention and international human rights law, Australia must be satisfied, in relation to each person transferred for processing in another country, that:

- The person will have access to an effective refugee status assessment procedure.
- The person will not be *refouled* in contravention of the Refugees Convention or human rights treaties to which Australia is a party (this obligation requires an assessment of the risk both in relation to the offshore processing country and in relation to possible subsequent transfer from that country).
- The characteristics of the person will be taken into account as appropriate in deciding whether to transfer that person (for example the best interests of the child must be a primary consideration in any action concerning a child, and the Government must be satisfied that a transfer will not result in arbitrary interference with a family).

Where Australia is involved in the processing of claims outside of Australia or exercises control/authority over people whos claims are being processed outside of Australia (that is, people in another country), other obligations may become relevant.

Examples of models of regional and extraterritorial processing

Various models exist for the processing of asylum claims outside Australia. These can be considered as part of a continuum, ranging from models which are wholly bilateral and in which Australia retains responsibility for assessing the claims of asylum seekers and provision of outcomes (for example, the 'Pacific Strategy'), to bilateral models (with some broader elements) which involve burden sharing of asylum caseloads of shared concern (for example, the Malaysia Arrangement), to multilateral or regional models where there is greater collective responsibility for assessments and outcomes (for example, the Comprehensive Plan of Action).

The 'Pacific Strategy'

In September 2001, as part of the response to the *MV Tampa* incident, the Parliament passed legislative amendments that allowed for offshore processing of unauthorised arrivals.[118] These amendments were part of a broader series of measures developed in 2001 and 2002, which included the use of temporary protection visas (Attachment 4) and turning back SIEVs carrying asylum seekers.

RSD for individuals seeking to enter or who had entered Australian excised offshore places was undertaken in Nauru[119] and PNG[120] under bilateral arrangements as part of the 'Pacific Strategy'. Australia (after early initial involvement by UNHCR) undertook RSDs and bore responsibility for outcomes such as return of individuals who were not owed protection, voluntary repatriation and sourcing resettlement places for refugees.

Table 26: Outcomes for individuals taken to Nauru and Manus: 2001-2008

Resettled	1,153
Australia	705
New Zealand	401
Sweden	21
Canada	16
Denmark	6
Norway	4
Voluntary returns	**483**
Deaths	**1**
Total	**1,637**

Source: DIAC.

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118   For historical context on the development of Australian policy approaches to managing irregular maritime arrivals, see 'Submission to the Joint Select Committee on Australia's Immigration Detention Network', September 2011, *DIAC*, viewed 7 July 2012, www.immi.gov.au/media/publications/pdf/2011/diac-jscaidn-submission-sept11.pdf.

119   Nauru was not a party to the Refugees Convention for the duration of the Pacific Strategy. Nauru became a party to the Convention and its 1967 Protocol on 26 September 2011 after signing the instruments of access in June 2011.

120   PNG has been a party to the Refugees Convention since 1986 with reservations affecting refugees' rights (including areas of employment, housing, education, freedom of movement, expulsion and access to naturalisation).

The Malaysia Arrangement

The Malaysia Arrangement is a bilateral arrangement under the Bali Process RCF, entered into between Malaysia and Australia on 25 July 2011. RSD for up to 800 individuals who had entered Australia at an excised offshore place was to be undertaken in Malaysia[121] by UNHCR. Australia agreed to resettle 4,000 UNHCR-mandated refugees from Malaysia over four years (1,000 each year) who could demonstrate they entered Malaysia and were registered with UNHCR prior to 25 July 2011 and had remained in Malaysia.[122] Malaysia committed to treat individuals transferred from Australia to Malaysia with dignity and respect and in accordance with human rights standards and to respect the principle of *non-refoulement.* Malaysia also committed to facilitate the lawful presence in Malaysia of individuals transferred.

Although not parties to the Malaysia Arrangement, UNHCR and IOM were to undertake a range of activities in association with the Arrangement. In addition to RSD for individuals transferred to Malaysia from Australia, UNHCR indicated it would assist in finding durable outcomes for people found to be owed protection. Australia was to assist Malaysia to facilitate the return from Malaysia to a country of origin (or a third country if appropriate) of individuals determined not to be in need of international protection.[123] IOM and UNHCR indicated they would facilitate access to services to assist vulnerable individuals. IOM and UNHCR also indicated they would assist transferees to access accommodation, health and education services as well as provide counselling to transferees on durable outcomes. IOM was to assist transferees become self-reliant.

Multilateral arrangements – regional processing

The Comprehensive Plan of Action (CPA) was adopted at the International Conference on Indo-Chinese Refugees in June 1989[124] and is often cited as a model of regional processing. The conference aimed to resolve the situation of Indochinese refugees in camps in South East Asia.[125] The key objectives of the CPA, which ran for seven years, were to:

- reduce clandestine departures of refugees from their home country by promoting increased opportunities for legal migration under the Orderly Departure Program from source countries;

- ensure countries in South-East Asia continued to act as 'countries of first asylum' and grant temporary refuge to all asylum seekers as well as access by UNHCR to asylum seekers;

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121   Malaysia is not a party to the Refugees Convention.

122   *Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement*, http://www.minister.immi.gov.au/media/media-releases/_pdf/20110725-arrangement-malaysia-aust.pdf, viewed 26 July 2012.

123   Ibid.

124   *4th Meeting of the Executive Committee of the Standing Committee – High Commissioner's Programme*, 19 August 1996, viewed 26 July 2012, http://www.unhcr.org/3ae68cf94.pdf.

125   'Submission to the Joint Select Committee on Australia's Immigration Detention Network', *DIAC* September 2011, p169.

- establish a consistent region-wide RSD process in accordance with internationally agreed criteria;

- resettle people found to be refugees in third countries, with a call to the international community to respond to the need for resettlement; and

- repatriate people found not to be refugees and reintegrate them in their home countries.[126]

Consistent with the Bali Process RCF, and to ensure long-term sustainability, future models or arrangements for regional processing could be designed around the following principles. Regional arrangements should:

- be a strategic partnership with countries that are part of asylum flows or can make a contribution to improving 'protection space' in the region;

- discourage dangerous irregular movement and provide opportunities through regular routes;

- respect international human rights obligations, especially *non-refoulement,* whether or not the countries involved are parties to the Refugees Convention or other relevant conventions;

- provide access to consistent asylum procedures, either through domestic or international arrangements;

- ensure timely long-term outcomes, either in or outside the region (but preferably as close as possible to their country of origin) for persons determined to be in need of protection;

- include the active participation or support of important partners such as UNHCR and IOM and provide opportunities for input and participation from civil society; and

- look to address the factors causing people to leave their country of origin to seek asylum.

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126 'Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, Report of the Secretary-General (A/44/523)', *UN Assembly 1989,* viewed 26 July 2012, http://www.unhcr.org/refworld/topic,459d17822,459d17a82,3dda17d84,0.html.

ATTACHMENT 9: CHANGES TO THE HUMANITARIAN PROGRAM

Overview of the current SHP component of the Humanitarian Program

There are currently 20,100 applications outstanding in the SHP. Approximately 16,300 of these are applications by the immediate family members (also known as 'split family') of onshore proposers.[127] Over 90 per cent of those onshore proposers travelled to Australia in an irregular manner.

Under current policy settings SHP applicants who are:

- non-immediate family (approximately 3,800 applicants in the SHP backlog) must meet the 'substantial discrimination' test at the time of application and must meet the 'compelling reasons'[128] criterion at the time of decision; and

- immediate family are given priority in processing and only need to meet the 'compelling reasons' criteria at the time of decision. In most cases this is regarded as met on the sole basis of the applicant's close family connection to Australia. As such, immediate family applicants do not have their individual humanitarian claims (the degree of any discrimination they face in their home country) considered as part of the 'compelling reasons' assessment. These applicants would normally be granted a visa under current policy settings.

The immediate family applicants are not necessarily those most in need of a humanitarian visa, but they currently make up a large proportion of SHP grants due to the high number of onshore Protection Visa holders seeking to reunite with their family.

The reduced number of SHP places (only 714 places in the 2011-2012 program year), due to the high number of IMAs, will lead to further increases in the backlog. All applicants face the prospect of no outcome for many years. Non-immediate family applicants who are of lower processing priority are not likely to be granted a visa at all, despite some having strong humanitarian claims.

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127 Immediate family includes spouses/partners, children and parents.

128 The decision maker needs to be satisfied that there are compelling reasons to grant a permanent visa having regard to: the degree of discrimination the applicant is subject to in his/her home country; the extent of the applicant's connection with Australia; whether or not there is another suitable country available for resettlement; and the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant.

What needs to happen

Adjustments are required to:

- address the current SHP applications backlog; and
- rebalance the Humanitarian Program to deliver places to family members offshore and on a humanitarian needs basis.

Noting the proposals to immediately increase the Humanitarian Program to 20,000 places and the family stream of the Migration Program by 4,000 places, these adjustments include:

- For the backlog: restore a greater humanitarian focus to the SHP visa and encourage those that do not have humanitarian claims to test their eligibility in the family stream of the Migration Program.
- For the ongoing SHP:
  - rebalancing the Humanitarian Program to have an offshore SHP and refugee focus rather than an onshore asylum focus; and
  - amending the SHP policy settings to provide incentives for asylum seekers to access enhanced processing arrangements in the region and not take dangerous boat journeys to Australia.

Proposed policy changes

The backlog

It is proposed the policy be changed so that immediate family SHP applicants in the backlog with proposers who were IMAs (other than proposers who are unaccompanied minors at the time of the application), be assessed against the full humanitarian criteria in the SHP subclass. This means that immediate family members with adult proposers who were IMAs would no longer be regarded as meeting the 'compelling reasons' criterion on the sole basis of being immediate family.

The current policy concession would continue to apply to applicants who are the immediate family of proposers who were not IMAs, or who were IMAs but under 18 at the time of the SHP application. For those SHP applicants who are not the immediate family of their proposer the policy settings would also remain unchanged.

This policy change means that of the 16,300 SHP immediate family applicants currently awaiting an outcome, only cases with compelling claims would be granted a visa. Those applicants who would not meet the new test (that is meet the full humanitarian criteria) would need to test their eligibility for family reunion through the family stream of the Migration Program. To avoid simply shifting the backlog to another category, it is proposed the family stream of the Migration Program be increased.

A step-by-step overview of what the proposed changes would mean for applicants in the backlog is at Figure 21.

SHP applications in the future

It is proposed that the SHP visa criteria be amended such that in the future, any person who was an IMA cannot be a proposer under the SHP. Persons who were IMAs would need to seek family reunion through the family stream of the Migration Program.

This change would have a particular impact in the future on UAMs as sponsoring their parents (and siblings as secondary applicants) would not be viable due to the long waiting times in the parent category of the family stream.

For a number of years, and increasingly so in recent times, UAMs have been sent to Australia on boats to be an 'anchor' for migration for their family. Once established in Australia (but before they turn 18), they seek family reunion. In 2011-12 a total of 889 UAMs arrived in Australia as IMAs compared to 470 IMAs who were UAMs in 2010-11. The Panel is of the view that the change to eligibility to be a SHP proposer would complement other parts of the recommended package that encourage asylum seekers to access regular pathways. This is intended to reduce the number of UAMs making the dangerous voyage to Australia.

A step-by-step overview of what the proposed changes would mean for future SHP applicants is at Figure 22.

The family stream of the Migration Program

Applicants who would fail to meet the new test for an SHP visa may be eligible to be granted visas under the family stream of the Migration Program. It is estimated that of those in the SHP backlog who are not likely to be eligible for an SHP visa due to the changed policy setting, around 80 per cent could become applicants for partner/spouse visas under the family stream of the Migration Program.

Holders of a Partner visa are permitted to enter and remain permanently in Australia, enrol in Australia's medical benefits expenses and hospital care scheme through Medicare and are allowed to work and study. Partner visa holders who may have otherwise entered Australia through the immediate family provisions under the SHP may also be eligible to have the two year waiting period for social security payments waived. Currently the visa application charge is $1,995 and the processing time is 5 to 12 months.

Figure 21: Overview of the process for clearing the SHP backlog

Special Humanitarian Program Backlog

Policy Changes Objectives

1. Address the current Special Humanitarian Program (SHP) backlog and ensure sufficient places on a continuing basis

2. Encourage SHP applicants to access the Family Stream of the Migration Program

Key Changes

1. Increase the Humanitarian Program to 20,000 places per annum

2. Increase the family stream of the Migration Program by 4,000 places per annum*

| Applicants in the backlog who have a proposer who was an IMA adult at the time the SHP application was lodged | Applicants in the backlog who have a proposer who was an IMA under the age of 18 at time the SHP application was lodged | Applicants in the backlog who have a proposer who was not an IMA |

Concession regarding immediate family meeting 'compelling reasons' criteria is removed

Current Policy remains (i.e. concessions for immediate family meeting 'compelling reasons' criteria)

Other non-immediate family must meet 'substantial discrimination test' as is currently the case

Other non-immediate family must meet 'substantial discrimination test' as is currently the case

SHP visa Grant | SHP visa Refusal

SHP visa Grant | SHP visa Refusal

May be able to sponsor family through the family stream of the Migration Program

May be able to sponsor family through the family stream of the Migration Program

* This is the same 4,000 place increase as referred to in Figure 22

Figure 22: Overview of SHP family reunion application process in the future
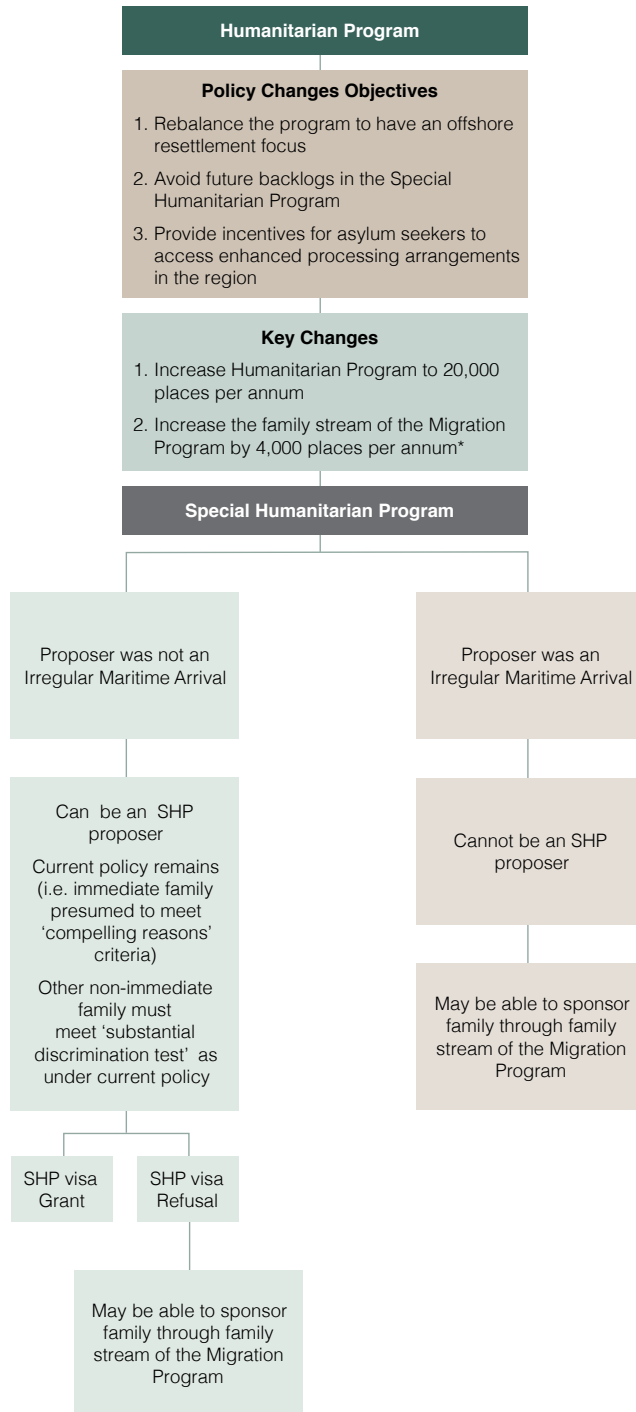
* This is the same 4,000 place increase as referred to in Figure 21

ATTACHMENT 10: LEGISLATION CHANGES REQUIRED TO IMPLEMENT THE PANEL'S RECOMMENDATIONS

The Panel has made a preliminary assessment that a number of the recommendations contained in this Report may require legislative changes. Further detailed advice will be required. Potential changes required are outlined below.

Migration Act 1958

Amendments to:

- Support regional processing by allowing for the transfer of persons from Australia to another location for the purpose of processing their asylum claims. These amendments should ensure that any designation of a location as a place where asylum seekers may be transferred is a disallowable instrument.

- Clarify that any person who enters Australia unlawfully by sea is liable to have any claims for asylum assessed in a location outside Australia. At the present time only IMAs entering Australia at an 'excised offshore place' may be taken for processing in a location outside Australia.

Migration Regulations 1994

Amendments to:

- Prevent future IMAs from being able to be a 'proposer' for the purposes of an SHP application.

- Provide a temporary visa to asylum seekers who are having their claims processed outside Australia, to travel to and remain in Australia on a temporary basis while their claims for asylum are assessed and a suitable durable outcome is provided.

- Ensure that the principle of no advantage can be implemented in relation to IMAs being processed pursuant to regional arrangements.

Immigration (Guardianship of Children) Act 1946

Amendments to:

- Provide that the Minister for Immigration and Citizenship's consent is not required for a non-citizen child to be taken from Australia to another location for the purpose of processing their asylum claims.

- The Parliament will have the opportunity to oversight, among other things, arrangements for minors through its capacity under the *Migration Act 1958* to disallow the instrument designating a country as a regional processing location.

ATTACHMENT 11: LIKELY COSTS OF THE PANEL'S RECOMMENDATIONS

As part of its deliberations, the Panel has received advice from the Department of Finance and Deregulation on the general order of magnitude of costs of the key recommendations in this Report. These costs need to be offset against savings that the Panel believes will be made from expenditures currently incurred as a result of managing the flow of unauthorised arrivals in Australia. The forward estimates presented in the 2012-13 Budget estimate such expenditure incurred by the Department of Immigration and Citizenship alone over the period 2011-12 to 2015-16 inclusive to be at around $5 billion assuming that arrivals remain at around the level of 450 per month from 1 July 2012. With the levels of irregular arrivals averaging over 1,300 per month since April 2012, the Panel notes that if this rate of increase were to be sustained the costs of dealing with these IMAs would likely be significantly larger amount than the costs of the recommendations in this report.

In the Panel's view, the recommendations in this Report will promote greater efficacy, fairness and good management in Australian policymaking on protection and asylum issues. The recommendations will include new costs; but they will also, in the view of the Panel, result in significant savings in expenditures currently being incurred.

The Panel notes that the final cost of many of these recommendations will be influenced by decisions on particular practical costs, which are a matter for subsequent consideration by government.

The Panel has been advised that:

- an increase in the Humanitarian Program from its current level of 13,750 places per annum to 20,000 places per annum would cost in the order of $1.4 billion over the forward estimates;

- an increase in the Family Migration stream of the Migration Program of 4,000 places per annum would cost in the order of $0.8 billion over the forward estimates;

- the full establishment and operation of a regional processing capacity in Nauru accommodating up to 1,500 people would cost between $1.2 billion to $1.4 billion over the forward estimates, including capital costs in the order of $300 million depending on policy settings for amenity and running arrangements;

- the full establishment and operation of a regional processing capacity in PNG (such as on Manus Island) accommodating up to 600 people would cost in the order of $0.9 billion over the forward estimates, including capital costs in the order of $230 million depending on policy settings for amenity and running arrangements;

- the implementation of the Malaysia Arrangement requires operational funding of $80 million over the forward estimates (noting that the increase in resettlement places from Malaysia of 1,000 is already underway and will be met from the existing Humanitarian Program); and

- the establishment of a significant, ongoing research program to develop a more robust evidence base on irregular migration and asylum in partnership with academic and other expertise in the field, to strengthen both policymaking and operational management, is expected to require at least $3 million per annum. The Panel recommends that the need for this level of funding level should be reviewed after two years.

The Panel has made a number of other recommendations that may require reprioritisation of activity within portfolios or within the Australian aid program, including:

- the development of a more extensive program of bilateral cooperation on maritime, law enforcement and intelligence cooperation with Indonesia;

- increasing the diversity and impact of Australia's capacity building initiatives to support the accelerated development of a regional cooperation framework, with the provision of up to $70 million over the forward estimates from Australia's aid program; and

- law enforcement and disruption activity aimed at impeding the operations of people smugglers be retained as a priority for relevant Australian government agencies and resourced appropriately.

ATTACHMENT 12: PARTIES CONSULTED

The Panel consulted with the following third parties in preparing its report.

The Hon. Tony ABBOTT, MP	Federal Opposition Leader
Mr Iain ANDERSON	First Assistant Secretary, Attorney-General's Department
Sister Brigid ARTHUR	Brigidine Sisters
Dr Susan BANKI	University of Sydney
Mr Greg BARNS	Barrister & Director, Rights Australia
Admiral Chris BARRIE, AC (Retired)	Former Chief of the Defence Force
Mr Peter BAXTER	Director-General, Australian Agency for International Development (AusAID)
Ms Kerrin BENSON	Member of the Minister's Council on Asylum Seekers and Detention (MCASD)
Ms Gillian BIRD	Deputy Secretary, Department of Foreign Affairs and Trade
The Hon. Chris BOWEN, MP	Minister for Immigration and Citizenship
Mr Martin BOWLES, PSM	Acting Secretary, DIAC
Ms Lucy BOWRING	Regional Coordinator, International Detention Coalition
The Hon. Catherine BRANSON, QC	President, Australian Human Rights Commission and Human Rights Commissioner
Professor Rod BROADHURST	ARC Centre of Excellence in Policing and Security
Mr Julian BURNSIDE, AO QC	Barrister
Father Joe CADDY	CEO, Catholic Care
Mr Michael CARMODY, AO	Chief Executive Officer, Australian Customs and Border Protection Service
Professor Stephen CASTLES	University of Sydney
Mr Ignatius CHACKO	Tamil community
Professor Hilary CHARLESWORTH	Australian National University
Ms Megan CLEMENT	Deputy Section Editor, Politics & Society, The Conversation
Mr Guy COFFEY	Foundation House
Ms Caz COLEMAN	Member of the Minister's Council on Asylum Seekers and Detention
Mr Andrew COLVIN, APM OAM	Deputy Commissioner, Australian Federal Police
Ms Peta CREDLIN	Chief of Staff to the Federal Opposition Leader
Ms Pamela CURR	Campaign Coordinator, Asylum Seeker Resource Centre
Ms Helen DANIELS, PSM	Assistant Secretary, Attorney-General's Department
Dr Sara DAVIES	Senior Research Fellow, Centre for Governance and Public Policy
Professor Glyn DAVIS, AC	Vice-Chancellor, University of Melbourne
Mr Ian DEANE	Special Counsel to DIAC, Australian Government Solicitor

Ms Lis DE VRIES	Australian Red Cross
Professor Alan DUPONT	University of Sydney
Professor Carolyn EVANS	Dean, Melbourne Law School
Dr Nathan EVANS	Office of National Assessments
Ms Bassina FARBENBLUM	Director, Human Rights Clinic, University of NSW
Mr Bill FARMER	Former Australian Ambassador to Indonesia Former Secretary, Department of Immigration
Ms Erika FELLER	Assistant High Commissioner (Protection), United Nations High Commissioner for Refugees (UNHCR)
Mr Garry FLEMING	Acting Deputy Secretary, DIAC
Associate Professor Michele FORD	University of Sydney
Associate Professor Michelle FOSTER	Director, International Refugee Law Research Programme, Melbourne Law School
Professor James J FOX	Crawford School of Public Policy, ANU
The Hon. Malcolm FRASER, AC CH	Former Prime Minister of Australia (1975-83)
Mr Ray FUNNELL AC	Deputy Chair, MCASD
Mr Stephen GAGELER, SC	Solicitor-General
Ms Kate GAUTHIER	Migration Law Program, ANU
The Hon. Julia GILLARD, MP	Prime Minister
Vice Admiral Ray GRIGGS, AO CSC RAN	Chief of Navy
Mr Alan GYNGELL, AO	Director-General, Office of National Assessments
Senator Sarah HANSON-YOUNG	Senator for South Australia, Australian Greens
Ms Dominique HARDY	Senior Liaison Officer to DIAC, United Kingdom Border Agency
Mr Tristan HARLEY	Research Associate to Professor Pene Mathew
Professor Stuart HARRIS	Australian National University
Sir Lenox HEWITT	Former Secretary, Department of the Prime Minister and Cabinet
Dr Gerhard HOFFSTAEDTER	Lecturer, Anthropology, University of Queensland
Mr Peter HUGHES PSM	Former Deputy Secretary, DIAC Visitor, Australian National University
General David HURLEY, AC DSC	Chief of the Defence Force
Mr Krish ILLUNGKOO	Tamil community
Professor Andrew JAKUBOWICZ	University of Technology Sydney
Mr Neil JAMES	Executive Director, Australia Defence Association
Mr Sharhram JANAZ	Iranian community
Mr Stephen JONES, MP	Member for Throsby, Australian Labor Party
Dr Ida KAPLAN	Victorian Foundation for Survivors of Torture (VFST) and University of NSW
Mr Tony KEVIN	Author – 'Reluctant Rescuers'
Ms Mitra KHAKBAZ	Iranian community
Ms Kathy KLUGMAN	First Assistant Secretary, Department of the Prime Minister and Cabinet

Mr Kruno KUKOC	First Assistant Secretary, DIAC
Mr Miles KUPA	Australian High Commissioner to Malaysia
Mr James LARSEN	Former Australian Ambassador for People Smuggling Issues
Mr Duncan LEWIS, AO DSC CSC	Secretary, Department of Defence
Professor Tim LINDSEY	University of Melbourne
Ms Libby LLOYD, AM	Member of the Council for Australian Arab Relations and Member of MCASD
Dr Maryanne LOUGHRY, RSM	Jesuit Refugee Service; Member of MCASD
Professor Andrew MacINTYRE	Australian National University
Senator John MADIGAN	Senator for Victoria, Democratic Labor Party
Mr David MANNE	Executive Director, Refugee & Immigration Legal Centre
Mr Greg MANNING	First Assistant Secretary, Office of International Law, Attorney-General's Department
Mr Peter MARES	Cities Fellow, Grattan Institute
Dr Margot McCARTHY	National Security Advisor
Mr Paul McDONALD	CEO, Anglicare Victoria
Professor Peter McDONALD, AM	Australian National University
Professor Patrick McGORRY, AO	Executive Director, Orygen Youth Health (OYH); University of Melbourne
Dr Anne McNEVIN	Royal Melbourne Institute of Technology
Dr Dave McRAE	Lowy Institute for International Policy
Mr Andrew METCALFE, AO	Secretary, DIAC
Senator Christine MILNE	Leader of the Australian Greens
Associate Professor Harry MINAS	University of Melbourne; Member of MCASD
Dr Antje MISSBACH	University of Melbourne
Dr Paul MONK	Austhink
Mr Greg MORIARTY	Australian Ambassador to Indonesia
Mr Scott MORRISON, MP	Shadow Minister for Immigration and Citizenship
Father Aloysius MOWE	Jesuit Refugee Service
Senator the Hon. Judi MOYLAN MP	Federal Member for Pearce
Mr Ali MULLAIE	Afghan community
Mr Don MURRAY	Canadian Border Services Agency
Mr Tony NEGUS, APM	Commissioner, Australian Federal Police
Professor Klaus NEUMANN	Swinburne University of Technology
Ms Arja KESKI-NUMMI, PSM	Fellow, Centre for Policy Development; Former First Assistant Secretary, DIAC
Ms Louise OLIFF	Refugee Council of Australia
Mr Robert ORR, QC PSM	Chief General Counsel, Australian Government Solicitor
Ms Alex PAGLIARO	Refugee Action Coordinator, Amnesty Australia
Mr Bill PETTITT	Principal Intelligence Advisor, DIAC

Mr Michael PEZZULLO	Chief Operating Officer, Australian Customs and Border Protection Service
Professor Sharon PICKERING	Monash University
Ms Kate POPE, PSM	First Assistant Secretary, DIAC
Professor Nicholas PROCTOR	University of South Australia; Member of MCASD
Ms Kristen PROUD	Hotham Mission Asylum Seeker Project
Mr Marc PURCELL	Executive Director, Australian Council for International Development (ACFID)
Mr Hussain RAZAIAT	Afghan community
Mr Hassan REZAHI GHAZNAWI	Afghan community
Mr Dennis RICHARDSON, AO	Secretary, Department of Foreign Affairs and Trade
Mr Ashton ROBINSON	Assistant Secretary, Office of National Assessments
Professor Kim RUBENSTEIN	Australian National University
Professor Amin SAIKAL, AM	Australian National University
HE Admiral Thisara SAMARASINGHE	High Commissioner for Sri Lanka in Australia
Ms Jeanette SAUTNER	Counsellor, Canadian Embassy
Ms Cath SCARTH	Adult Multicultural Education Services
Dr Wendy SOUTHERN, PSM	Deputy Secretary, DIAC
The Hon. Wayne SWAN, MP	Deputy Prime Minister, Treasurer
Dr John SWEENEY	Coordinator of Research, Edmund Rice Centre
Mr William SWING	Director-General, International Organization for Migration
Mr Jo SZWARC	Victorian Foundation for Survivors of Torture
Dr Savitri TAYLOR	Latrobe University
Mr James THOMSON	Director of Policy and Advocacy, National Council of Churches-Act for Peace
Mr Richard TOWLE	Regional Representative, United Nations High Commissioner for Refugees (UNHCR)
Mr Peter VARDOS, PSM	Acting Secretary, DIAC
Dr Bala VIGNESWARAN	Tamil community
Dr Ian WATT, AO	Secretary, Department of the Prime Minister and Cabinet
Professor Michael WESLEY	University of Sydney
Dr Amanda WHITING	University of Melbourne
Dr Jessica WHYTE	University of Western Sydney
Mr Roger WILKINS, AO	Secretary, Attorney-General's Department
Mr Tony WINDSOR, MP	Member for New England
Mr Andrew WILKIE, MP	Member for Denison
Professor Glenn WITHERS, AO	Australian National University
Mr Arnold ZABLE	Vice-Chancellor's Fellow, University of Melbourne
Mr Matthew ZAGOR	Australian National University

ATTACHMENT 13: SUBMISSIONS RECEIVED

The following is a list of authors who provided submissions to the Panel. Copies of submissions received are available at www.expertpanelonasylumseekers.dpmc.gov.au.

In addition to the below list, the Panel also received anonymous and confidential submissions and submissions from authors who did not provide consent to the publication of their names.

Submissions from groups and organisations

ACT Refugee Action Committee

Amnesty International Australia

Anglicare Victoria

Asylum Seeker Resource Centre

Australian Catholic Migrant and Refugee Office

Australian Christian Lobby

Australian Council for International Development

Australian Federal Police Association

Australian Greens

Australian Homestay Network

Australian Human Rights Commission

Australian Lawyers Alliance

Australian Psychological Society

Australian Tamil Congress (QLD Chapter)

Balmain for Refugees

Baptcare

Brigidine Asylum Seekers Project

Brotherhood of St Laurence

Catholics in Coalition for Justice and Peace

ChilOut

Coalition for Asylum Seekers, Refugees and Detainees

Darwin Asylum Seeker Support and Advocacy Network

Federation of Indo-China Ethnic Chinese Association of Australia

GetUp!

High Commission of Sri Lanka

Hotham Mission Asylum Seeker Project

Humanist Society of Victoria

Human Protection Hub (Griffith University)

Human Rights Law Centre

International Federation of Iranian Refugees

Labor for Refugees

Law Council of Australia

Law Institute of Victoria

Law Society Northern Territory

Liberty Victoria *et al*.

Project Safecom

Refugee Action Coalition

Refugee Action Collective (Melbourne)

Refugee Advocacy Network

Refugee Council of Australia

Rural Australians for Refugees (Bendigo)

Rural Australians for Refugees (Castlemaine)

Rural Australians for Refugees (Queenscliff)

Save the Children Australia

Springvale Monash Legal Service

Stable Population Party

Tamils Against Genocide *et al*.

The Society for Peace Unity and Human Rights in Sri Lanka (NSW)

UNHCR

Uniting Justice Australia

Victoria Legal Aid

Submissions from individuals

Malin Abeyatunge

Gemma Abraham

Joe Abrahams

Hannah Allcock

Helen M Allin

Leah Armand

Jean Hume Baker

Margaret Ruth Baker OAM

Mike Barlow

Andrew Bartlett

Chris Baulman

Peter Beahan

Jane van Beek

John V Belcher

Bronwyn Bell

Jenny Bell

Julianne Bell

Richard Bentley

John Bernacki

David L Bitel

Cory Boardman

Clare Brennan

Fr Frank Brennan SJ AO

Ray Bricknell

Mark Bruhwiller

Julian Burnside AO QC

Michelle Burrows

P.M. Button

David Bycroft

Moira Byrne

Rev Warwick Cadenhead

Howard Cai

Thea Calzoni

Dr David Cantor

Ken Carney

Janet Castle

Michelle Cavanagh

Dusan Cech

Margeaux Chandler

Fabia Claridge

Nick Clarke

Patou Clerc

Timothy Collier

Brian Colyer

Robyn Coningham

Sophie Constance

Hellen Cooke

Tom Cooke

Melanie Coombs

Chris Coote

Lisa Craig

John Craig

Mary Crock

Fr Paul Crotty

Sr Aileen Crowe

Claudette Cusack

Alan G. Day

Margaret Desira

James Dingwall

Korey and Kelly Dowling

Helen Dunstan

Charles Ellem

Robin Errey

Helen Eyles

David Feith

Carol Flanagan

Beth Flenley

George Flowers

Andrew Fodor

Emeritus Prof Elliott Forsyth

Michael S Foulsham

Ken Francis

Rt Hon Malcolm Fraser AC CH

Ruth Fuller

Steve Geoghegan

Petro Georgiou

Prof Geoff Gilbert

Peter Giudes

Zalan Glen

Guy S. Goodwin-Gill

Diane Gosden

Natalie Gould and Mairi Petersen

Chester Graham

Pat Grainger

Michael Gratton

Dennis Green

Lindel Greggery

Brigid Guinan

Geoff Hacquoil

Jedrek Hagedorn

Margaret Hanrahan

Graham Hardy

Kate Harriden

Graeme Heine

Loris Hemlof

Mark Henderson

Lawry Herron

Dianne Hiles AM

Matt Hilton

Jo Hind

Paul Hite

Benjamin Hockley

Greg Hogan

Chris Holley

G E Holman

Toni-Lee House

Dorothy Howes

Deanna Howland

Peter Hughes PSM

Rev Robert Humphreys

Nevell Hungerford

Amjad Hussain

Mirza Hussain

Sabir Hussain

James Hutchinson

Marg Hutton

Cheryl Iser

Steve Isles

Ian Janzow

Kate Jastram

Pamela Jess

Gillian Johnson

Les Johnson

Warren Johnson

Ellie Johnston

Rev Douglas L. Jones

Melody Kemp

Belinda Kendall-White

Tony Kevin

Rae Kilkenny

Howard King

Marilyn King

Dr Kristine Klugman OAM

Prof Susan Kneebone *et al*.

Tim Kottek

Syliva Kronberg

Mark Lacey

Lev Lafayette

Associate Prof Terry Laidler

Prof Hélène Lambert

Andy Lamey

Colleen Lane

Sandra Langtree

Greg Larkin

Arthur and Rosemary Lathouris

Dymphna Laurie AM

Trevor Lavey

Pat Law

Steffi Leedham

Madeleine Legge

Genevieve Lloyd

Margaret Logan

Bronwyn Long

Dr Virginia Lowe

Adjunct Associate Professor David Lucas

Tuong Quang Luu AO

David Mac Phail

Ian Macphee

Leith Maddock

Edward Mahoney

Glenn Major

Prof William Maley AM

Reg and Marie Maloney

Michael P Mardel

David Marler

Alison Martin

Brett Massoud

Roseanne Masters

Margot Maule

Prof Jane McAdam *et al.*

John McBain

Todd McCarthy

Margaret McGregor OAM

Kris McIndoe

Rhyll McMaster

Rod Mead

John Menadue and Arja Keski-Nummi

David Mitchell

Martha Mollison

Russell Morison

Libby Morrison

Wayne Moynham

William Mudford

Alex Mulholland

John Murray and Maureen Partridge

Greg and Pauline Naylor

Nick Neary

Prof Klaus Neumann

Paul Nolan

Sharon Noske

Pauline Nunan

Pat O'Brien

Glenn Osboldstone

Chris Ottaway

Monica O'Wheel

Dr Sev Ozdowski OAM

Hans Paas

Dorothy Page

Stephen Page

Pam and Ralph

John Parker

Anne Parnis

Nick Pastalatzis

Dr Anne Pedersen *et al.*

Dr Anne Pedersen

Robert Pepper

Asoka Perera

Marlene Perkins

Pat Perkins

Robert Perrin

Bill Perry

Hoa Pham

Denise Phillips

Jan and Martyn Phillips

Russell Phillips

Ross Pickard

Prof Sharon Pickering and Dr Leanne Webber

Dr Katrine Pilcher

Marion Pithers

Bev Porter

Shane Prince

George H Purdy

Bevil Purnell OAM

Priya Rangan

Peter Ravenscroft

Manita Ray

Audrey Raymond

AVM Richard Richardson AO AFC (Ret'd)

Max and Willis Ripper

Leanne Rissman

Doreen Roache

Alain Rondot

Maurice Rooney

Nicole Rowan

George Rupesinghe

Betty Russell

Peter Sainsbury

Robyn Sampson

Anna Sande

Geoff Schleehauf

Wayne Scholes

Rosie Scott

Mike Scrafton

Noel Semler

Andy Semple

Patricia Shadforth

Anthony Sheldon

Graham Shepherd

Marilyn Shepherd

Vianney Shiel

Colin Smith

Elaine Smith

Ranjith Soysa

Janet Spann

James and Linda Sparrow

Shae Spry

Gerard Sta Maria

Aidan Stanger

Leonie Starnawski

Don Stokes

Fiona and Matthew Stokes

Steve Stokes

Des Storer and Adrienne Millbank

Suzanne

Vernon Terrill

Dilan Thampapillai

Yabbo Thompson

Liz Thornton

Barbara Trauer

Alan Tulloch

Dr Sanjugta Vas Dev

Karl J Vass

Arthur Ventham

Donna Wand *et al*.

Prof Helen Ware

Vajeera Warnakulasuriya

Steve Warne

Sue Wasterval

Sam Watkins

Kathy Watson

Sally Wearne

Graham Wells

Mark Whillas

Sharon and Keith Wightley

Lyn Wild

Denise Williams

Graham Williamson

Russell Willis

Peter Willott

Jim Wilson

Lawrence Wilson

Dr Klaas Woldring

Noel Wyndom

ATTACHMENT 14: GLOSSARY OF COMMONLY USED ACRONYMS AND TERMS

Commonly used acronyms

ACBPS	Australian Customs and Border Protection Service
ADB	Asian Development Bank
ADF	Australian Defence Force
AFP	Australian Federal Police
AGD	Attorney-General's Department
AMSA	Australian Maritime Safety Authority
APC	Asia Pacific Consultations on Refugees, Displaced Persons and Migrants
ASEAN	Association of Southeast Asian Nations
ATCR	Annual Tripartite Consultations on Resettlement
AusAID	Australian Agency for International Development
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CFA	country of first asylum
CPA	Comprehensive Plan of Action
CRC	Convention on the Rights of the Child
DFAT	Department of Foreign Affairs and Trade
DGICM	ASEAN Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs
DIAC	Department of Immigration and Citizenship
EC	the European Commission
IAMSAR	Conventions on International Aviation and Maritime SAR Manual
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICMPD	International Centre for Migration Policy Development

IDP	internally displaced person
IFRC	International Federation of Red Cross and Red Crescent Societies
IGC	Intergovernmental Consultations on Asylum, Migration and Refugees
ILO	International Labour Office
IMA	irregular maritime arrival
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
ITP	International transfer of prisoners
JWG	Joint Working Group
MFU	Major Fleet Units
MMAF	Indonesian Ministry of Marine Affairs and Fisheries
MOU	Memorandum of Understanding
NGO	non-government organisation
OEP	offshore entry person
PIDC	Pacific Immigration Directors' Conference
PNG	Papua New Guinea
PSR	Private Sponsorship of Refugees
RAN	Royal Australian Navy
RCF	Regional Cooperation Framework
RILON	Regional Immigration Liaison Officers Network
RSD	Refugee Status Determination
RSO	Regional Support Office
SAC	Special Assistance Category visa (discontinued)
SAR	Search and Rescue
SAR Convention	International Convention on Maritime Search and Rescue
SHP	Special Humanitarian Program
SIEV	Suspected Irregular Entry Vessel
SOEP	Senior Officers Exchange Program
SOLAS	safety of life at sea
SOLAS Convention	International Convention for the Safety of Life at Sea
TPV	temporary protection visa

UAM	unaccompanied minor
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention Against Transnational Organized Crime
WB	the World Bank
WGR	Working Group on Resettlement

Commonly used terms

Asylum seeker	An individual seeking international protection whose claim for refugee status has not yet been determined.
Bali Process	Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.
Contiguous zone	The contiguous zone is a belt of water contiguous to the territorial sea, the outer limit of which does not exceed 24 miles from the territorial sea baseline.
Country of first asylum	A country that permits a person fleeing from persecution to enter its territory for purposes of providing asylum temporarily, pending eventual repatriation or resettlement.
Disruption	To interrupt or impede the progress and movement of people smugglers or potential irregular maritime arrivals.
Fraudulent document	Any travel or identity document that has been falsely made or altered, that has been improperly issued or obtained, or that is being used by a person other than the rightful holder.
Humanitarian Program	Australia's Humanitarian Program comprises two components: (1) The onshore protection/asylum component provides protection to people found to be refugees after arriving in Australia, in line with the Refugees Convention. (2) The offshore resettlement component offers resettlement for people overseas who are in the greatest need of humanitarian assistance. The offshore resettlement component comprises two categories of permanent visas: refugee and SHP.

Internally displaced person	A person (or group of persons) who has been forced to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of, armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.
Irregular migration	Unauthorised migration that takes place outside the norms and procedures established by States to manage the orderly flow of migrants into and out of their territories.
Malaysia Arrangement	Arrangement Between the Government of Australia and the Government of Malaysia on Transfer and Resettlement signed on 25 July 2011.
Non-refoulement	The obligation on States under the Refugees Convention not to expel or return a person (that is, *refoule*), either directly or indirectly, to a place where his/ her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion. States that are party to other Conventions, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), also have obligations not to return a person to a country where he/she would be at a real risk of irreparable harm by way of arbitrary deprivation of life or application of the death penalty, torture, or cruel, inhuman or degrading treatment or punishment.
People smuggling	The United Nations Convention against Transnational Organized Crime's Protocol against the Smuggling of Migrants by Land, Sea and Air defines people smuggling as 'the procurement, in order to obtain directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident'.
Person of Concern	UNHCR identifies seven population categories, collectively referred to as persons of concern: refugees, asylum-seekers, internally displaced persons, refugees who have returned home (returnees), IDPs who have returned home, stateless persons and other people who do not fall under any of the above categories but to whom the Office extends protection. In 2007, two sub-categories were introduced: people in refugee-like situations (included under refugees); and people in IDP-like situations (included under IDPs).
Proposer	A person in Australia who supports another person's application for a visa under the SHP.

Refugee	Any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion: • is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or • who, not having a nationality and being outside the country of his/her former habitual residence is unable or, owing to such fear, is unwilling to return to it.
Regional Cooperation Framework	A framework endorsed by the Bali Process in March 2011 which supports regional cooperation to address irregular migration flows. It is based on the concept of burden-sharing and cooperation between source, transit and destination countries and enables States in the region to improve cooperation by entering into practical bilateral or multilateral arrangements on a voluntary basis. It sets out core principles relating to the encouragement of orderly migration, consistent processing of asylum claims, durable outcomes for refugees, the sustainable return of those found not be owed protection, and targeting of people smuggling enterprises.
Source country	Includes the country of origin or a Country of First Asylum for an asylum seeker or refugee (as distinct from transit countries.)
Special Humanitarian Program (SHP) visa	An Australian visa for people outside their home country who are subject to substantial discrimination in their home country amounting to gross violation of human rights, or for the immediate family of persons who hold or who held a refugee/ humanitarian visa.
Stateless person	A stateless person is someone who is not considered as a national by any country. In some cases, they are not legally recognised as a citizen by any country (a situation known as *de jure* statelessness). In other cases, a person may possess a legal nationality but cannot in practice exercise their citizenship rights (known as *de facto* statelessness).
Territorial sea	The territorial sea is a belt of water not exceeding 12 miles in width measured from the territorial sea baseline.

Trafficking in persons	The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
Turnback	Returning a Suspected Irregular Entry Vessel to its 'point of departure' state or the state in which it is registered ('flag State'); often the same state. Turnback is distinct from 'tow back', in which a SIEV that is unable to operate under its own power is towed back to its point of departure state or flag state.
1951 Convention relating to the Status of Refugees and its *1967 Protocol* ('Refugees Convention')	The Refugees Convention is the key legal document defining who is a refugee, their rights and the legal obligations of states. The 1967 Protocol removed geographical and temporal restrictions from the Convention. Australia is a party to both the Refugees Convention and the Protocol.
1961 Convention on the Reduction of Statelessness	The Convention defines classes of stateless persons; regulates their status and establishes standards of protection.
1976 International Covenant on Economic, Social and Cultural Rights	Part of the International Bill of Human Rights. Commits parties to work toward granting economic, social and cultural rights to individuals including labour rights, the right to education and standard living.
2010 Australia-Indonesia Implementation Framework for Cooperation on People Smuggling and Trafficking in Persons	A framework based on the *Agreement Between the Republic of Indonesia and Australia on the Framework for Security Cooperation - Lombok Treaty*. It underpins bilateral cooperation and focuses on pursuing broader partnerships on issues such as people trafficking, protection claims, people smuggling and asylum seekers.