



Submission to Inquiry into the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012

December 2012

Australia has never received a large number of refugees on its doorstep compared to other countries. We are far away from the rest of the world and surrounded by a huge ocean barrier. For this reason the US, Canada and European countries get many times more asylum applications than Australia.

The Australian government's attitude to the unauthorised arrival of asylum seekers by boat has been driven by so-called border protection policies rather than a concern for providing permanent protection and re-settlement – the commitments that underpin the principles of the Refugee Convention and humanitarian policy in general.

This wilful misrepresentation of Australia's obligation to asylum seekers has led to a situation in which both main political parties are committed to off-shore processing arrangements (in Malaysia, Manus Island or Nauru) that subvert the commitment to permanent protection and would inflict on-going human rights abuses on asylum seekers and refugees that Australia has pledged to protect.

The Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012

The Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012 (the Amendment Bill) proposes changing the definition of certain types of boat arrivals from "*offshore entry persons*" to "*unauthorised entry persons*".

The Sydney Refugee Action Coalition (RAC) opposes the proposed Amendment Bill, as the suggested wording imputes a negative meaning to *offshore entry persons*, taking the definition from neutral to pejorative and so creates a false notion that asylum seekers are illegal.

The proposed meaning is false, because Australia is a signatory of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (the Convention)¹, and asylum seekers are therefore entitled under the Convention to arrive without prior authorisation from Australia, with no documents, or with false documents, and to seek asylum.

As long as there is no other way for asylum seekers to gain enduring protection, asylum seekers will have to use boats to get to Australia.

Regional solutions, regional risks

Proposals for a "regional solution" mostly focus on plans for burden sharing with poorer neighbours in South East Asia. By contrast we recognise that Australia is the only country in the region that has the wealth, the resources and capacity to provide security and enduring protection for refugees.

¹ The UNHCR's 1951 Convention relating to the Status of Refugees, www.unhcr.org/3b66c2aa10.html

While it may be tempting to “contract out” Australia’s refugee processes, Australia cannot control the conditions and practises in other countries. RAC notes that Malaysia immigration officials have been selling men, women and children from Malaysian refugee camps into forced prostitution and slave labour.²



Under the law of "state responsibility", any unlawful treatment of refugees offshore, including human rights violations, will remain attributable to Australia, even if Nauru and PNG are also at fault. Insofar as Australia may engage another country as its "agent" to implement obligations under the Refugee Convention, Australia will remain responsible for the conduct of that agent.³

Excising the mainland from the migration zone

The Australian Government’s legislation to excise the mainland from the migration zone is denying vulnerable people arriving by boat any opportunity to seek refugee protection in Australia. By applying the excision policy to the whole of Australia, the Gillard Government has gone further than the Howard Government did with its Pacific Solution.

The government’s tough stance on asylum seekers is failing to deter boat arrivals, as a record number of over 8,000 asylum seekers have arrived since the announcement was made in August.

Asylum seekers are being left in limbo, and the government is refusing to process people who have arrived since 13 August, in spite of the fact that enough asylum seekers have arrived to fill Nauru and Manus Island more than twice over.

Asylum seekers have been dumped in tents on Nauru, and local land owners have not consented to lease arrangements. This has contributed to delays in the construction of safe and hygienic accommodation for asylum seekers in Nauru. Nauru’s Foreign Minister Doctor Kieren Keke has said that construction of the permanent accommodation is yet to even begin because a deal has not been struck with the hundreds of Nauruans who own around six portions of land that cover the site.

The blind application of the so-called ‘no advantage’ policy has led the government to implement

² US Department of State Trafficking in Persons Report 2010; Malaysia; excerpts; (Tier 2 Watch List) <http://www.state.gov/g/tip/rls/tiprpt/2010/142760.htm>; Claims of refugee trafficking in Malaysia; Wendy Carlisle; PM; www.abc.net.au/pm/content/2011/s3213013.htm

³ Excerpts, Offshore processing won't let Australia off the hook; G. Goodwin-Gill; Sydney Morning Herald; 24/08/ 2012 www.smh.com.au/opinion/politics/offshore-processing-wont-let-australia-off-the-hook-20120823-24ob4.htm

yet another element of failed Liberal Party policy. Excising the mainland is a nonsense. Thousands of asylum seekers are arriving at excised places. The Minister can excise all the territory he likes, but the question is, 'What is he going to do with the thousands of asylum seekers arriving at excised places who are languishing in Australian detention centres and on Nauru?'

Denying the right to lodge an application

The Australian government is conducting "screening out" interviews with asylum seekers on Nauru. Screening out is a cursory process that denies asylum-seekers the right to apply for asylum.⁴

There is compelling evidence⁵ that the government has been dismissing Sri Lankans as "economic migrants" after perfunctory five-minute interviews, with the outcome determined in advance. One man the government was about to deport told a Tamil community representative, "I tried to tell [the official] that I am a refugee and please help me, and she said: 'No, I am not here to hear all those stories, you are going.'"

The key issue is not whether Sri Lankans are "automatically entitled" to asylum. It is that the government is refusing to even let them make asylum claims.

The most recent Immigration Department statistics show that the vast majority are most likely asylum seekers. Seventy per cent of Sri Lankans were found to be refugees on their initial assessment in 2011-2012 with 82% of the rejections overturned on appeal⁶.

Destroying boats

After asylum seekers have arrived by boat, their vessels are confiscated and towed into deep water by the Royal Australian Navy, or moved under their own steam, before Customs removes any fuel and sets them alight⁷.

The Australian government's policy of destroying asylum-seeker boats has contributed to the increasing use of unseaworthy vessels⁸. Burning asylum seeker boats is one of the Australian government policies which makes boat travel more dangerous.

Unless there are alternative routes to permanent resettlement in Australia, asylum seekers will have no option but to take boats from Indonesia to Australia.

Warehousing asylum seekers in Indonesia

However, while Australia uses Indonesia to punitively warehouse asylum seekers, effectively creating a camp in Indonesia – successive governments have refused to systemically resettle refugees from Indonesia.

⁴ Tamil supporters concerned by 'screening out' <http://www.sbs.com.au/news/radio/episode/244795/Tamil-supporters-concerned-by-screening-out>

⁵ <http://www.theage.com.au/opinion/political-news/anger-over-sri-lankans-deportation-20121206-2ayd0.html>

⁶ parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2Fa41a5fdb-967c-42a4-b0f4-6ac936ebb9dc%2F0004;query=Id%3A%22committees%2Festimate%2Fa41a5fdb-967c-42a4-b0f4-6ac936ebb9dc%2F0000%22

⁷ Asylum seeker boats are destroyed off Christmas Island. John's Naval and other Marine and Service News; A collection of Navy and Marine News from around the world and back home in New Zealand; Friday, July 20, 2012

<http://www.nz16613.com/2012/07/asylum-seeker-boats-are-destroyed-off.html>

⁸ Those in peril on the sea; Mark Dodd and Brendan Nicholson; The Australian ; June 28, 2012

www.theaustralian.com.au/national-affairs/immigration/those-in-peril-on-the-sea/story-fn9hm1gu-1226410512009

Between 2001 and 2009 Australia accepted just 532 people – an average of less than 60 a year.⁹ In the financial year 2010-11, as part of a deal with Indonesia the government accepted about 500 people. However, just 97 people were accepted between July 1, 2011 and April 30, 2012.¹⁰

Therefore we propose as a central recommendation that Australia establishes properly resourced arrangements for the timely processing of asylum seekers in Indonesia and the guaranteed resettlement in Australia of those found to be refugees.

However, we also recognise that regardless of alternative measures put in place, there are circumstances in which asylum boats will continue to need to travel to Australia. For example boats also travel from Sri Lanka directly to Australia.

Therefore policy must focus on providing safe passage – both authorised and unauthorised – for asylum seekers and refugees travelling to Australia.

It is clear that the measures we outline would cost far less than the present system where Australia pays for the costs of imprisoning asylum seekers and refugees in Indonesia, anti-people smuggling and "border protection" measures as well as the costs of mandatory detention and offshore processing. Most importantly they would come at far less cost to the lives and welfare of asylum seekers.

The money saved from ending mandatory detention, which will cost almost \$1.1 billion in 2012-13¹¹ and the unnecessary border policing measures, costing another \$1.2 billion,¹² could be used to fund humanitarian policies.

Immediate recommendations

- (i) As an initial measure, to bring all UNHCR mandated and registered refugees from Indonesia to Australia, which included 1180 people with refugee status and another 4552 registered with the UNHCR at the end of May¹³;
- (ii) for Australia to take responsibility for all distress calls from asylum boats and for rescue operations in safety of life at sea (SOLAS) situations, including those that occur in Indonesian waters.
- (iii) to increase Australia's annual refugee intake to at least 25,000 – a move which would only bring Australia back to the proportional intakes of the early 1990s, before the Howard government came to power in 1996.
- (iv) de-link the offshore refugee intake from the special humanitarian quota. The result of this is that in years where more refugees arrive by boat there are less places under the special humanitarian program. The deliberate linking of these two programs was introduced by the Howard government as a punitive measure directed against refugee and migrant communities. No other country in the world has such a punitive measure.

⁹ Elibritt Karlsen, "Refugee resettlement to Australia: what are the facts?" *Parliamentary Library Background Note*, December 6, 2011

¹⁰ Senate Legal and Constitutional Committee Estimates Hearings May 21, 2012

¹¹ Refugee Council of Australia, "2012-13 Federal budget in brief" p2

<http://www.refugeecouncil.org.au/r/bud/2012-13-Budget.pdf>

¹² *Ibid.*, p3

¹³ See <http://www.unhcr.org/en/who-we-help/refugees> and <http://www.unhcr.org/en/who-we-help/asylum-seeker>

There are now strong indications that the relatives of refugees living in Australia are being forced to travel by boat because government policy has cut off other avenues of family reunion. This policy in the present circumstances risks repeating the same pressure caused by Temporary Protection Visas (TPVs) that prevented family reunion that created the tragedy of the SIEV X, costing the lives of 353 people, mostly women and children;

- (v) Decriminalise people smuggling in both Indonesia and Australia. People smuggling laws and Australia's policies encourage the indefinite detention of asylum seekers in Indonesia, forcing asylum seekers onto boats in the worst of circumstances. The Australian Federal Police's focus on people smuggling disruption operations means that the AFP do not act on safety issues, and are known to have withheld SOLAS information from maritime authorities;
- (vi) An inquiry into the failure of Australian rescue authorities and others to appropriately respond to the distress calls from the asylum boat on June 21 this year that resulted in at least 90 people losing their lives.

There are indications that the border protection and deterrence mandates of Australian agencies are responsible for the failure of authorities to properly respond to SOLAS situations.

Further measures towards safe passage and permanent protection

- (i) End mandatory detention and ensure that all boat arrivals in Australia are welcomed and are properly and speedily processed on bridging visas which allow them to live, work and study, access Medicare, Centrelink, etc, in the community
- (ii) Remove legislation excising the mainland of Australia from the migration zone, and return to the pre-1992 situation when there was no mandatory detention, no offshore processing and asylum seekers arriving by boat were processed while they lived in the community.
- (iii) Implement measures to ensure the safest possible passage of boats to Australia. This could include a system of notification of asylum boat departures and the possible provision of escort arrangements by appropriately equipped Australian government supported ships.
- (iv) establish sufficiently-resourced asylum seeker community processing in Indonesia and guarantee resettlement of those found to be refugees in Australia; times for processing and determination to be no longer than would apply in Australia. At present there is no quota on the processing of boat arrivals. An increased official refugee intake must not be used to administratively exclude resettling refugees from Indonesia.
- (v) Conduct an audit of deaths in immigration custody.
- (vi) Expand the National Deaths In Custody Program to include:
 - a. Deaths within immigration detention centres operated under Australian legal authority (whether located onshore or offshore).

- b. Deaths while under escort during deportation, or while designated authorities (such as police or immigration department compliance field officers) are attempting to take individuals into custody under the Migration Act.
- c. Deaths that occur during operations in Australian territorial waters once individuals or vessels have come under the surveillance or control of Australian border authorities.

All of these circumstances generate a duty of care that falls on Australian law enforcement and border officials. Official designation as a “death in custody” would mean the deaths that occur in detention be brought before a Coroner’s Court.

- (vii) Establish an exit interview to be conducted by an independent legal agency for each asylum seeker exiting detention.

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Borders should not be protected from refugees – that is the guiding principle of the Refugee Convention.
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