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Asylum seekers: an update

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Asylum seekers: an update

by

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SUMMARY

The issue of asylum seekers has proven a fraught policy area for successive governments in Australia. While asylum seeker policy falls under the jurisdiction of the Commonwealth, recent changes to Federal policy in relation to asylum seekers who arrive by boat could potentially have implications for NSW, with increasing numbers of asylum seekers being accommodated in the community, rather than in secure immigration detention centres. The NSW Government has responded with concern about the implications of recent policy changes for State infrastructure and resources. This paper outlines developments in national policies relating to asylum seekers between 2008 and 2011, thereby updating a paper published by the NSW Parliamentary Library Research Service in 2008.

1. Background

The first section of this paper begins by defining asylum seekers and refugees. It then provides a broad sketch of global refugee and asylum seekers movements, in terms of the numbers of refugees and asylum seekers on a global scale, as well as the main countries of origin and refuge of refugees and asylum seekers. The section ends by outlining asylum seeker flows to Australia in the context of Australia's Humanitarian Program.

2. Key developments since 2008

The second section of the paper outlines major policy and legal developments in relation to asylum seekers in Australia in 2009, 2010 and 2011. A more detailed chronology of developments in those three years is provided in Appendix Six, which appears in the electronic version of this paper.

The chronology presented in the paper incorporates such developments as:

- An increase in the number of asylum seekers arriving by boat;
- Pressures on the immigration detention network; and,
- Major High Court judgements which led to changes in the processing of asylum seekers who arrive by boat.

These developments culminated in the announcement in 2011 of policy changes in relation to asylum seekers, which mark a significant departure from those in place over the preceding decade. These changes include:

- The reversion to onshore processing of asylum seekers who arrive by boat.
- The accommodation of asylum seekers who arrive by boat in the community under bridging visas (following certain health, identity and security checks) and under the community detention program.
- The application of a single, consistent process for reviewing the protection claims of asylum seekers who arrive by both air and by boat.

3. Current Federal Policy

The third section of the paper sets out the current Federal policy approach to asylum seekers who arrive by boat, and provides details on bridging visas and community detention for asylum seekers. Whether the recent policy developments prove to be temporary arrangements rather than long term changes remains to be seen.

4. Issues for State Governments

The paper closes with a discussion of concerns raised by the NSW Government in relation to the anticipated impact on the State of the increased accommodation of asylum seekers, particularly in Sydney, where a significant proportion of the asylum seekers are expected to reside. It also outlines responses to these concerns from the Federal Government.

Concerns have been raised by the NSW and Victorian Governments as to the impact of the community placement policy on a number of State services, including: health; mental health; education; housing; transport; homelessness; domestic violence and child protection; policing; translation; and housing. The Federal Government responded to State Government financial concerns by stating that the States had been briefed that they would not incur additional financial costs as a result of the policy, as DIAC would be funding basic assistance programs for those placed in the community.

Further, the NSW Premier, Barry O'Farrell, and the NSW Police Minister, Mike Gallacher, reportedly expressed concern at a lack of consultation with States about the provision of services that asylum seekers would need. The issue of the adequacy or otherwise of mechanisms to facilitate consultation between the Federal and State Governments in dealing with aspects of migration policy involving asylum seekers emerged at the time of the protests at the Villawood Immigration Detention Centre in Sydney in April 2011. Immediately following the protests, which involved up to 100 firefighters and the NSW public order and riot squad, the NSW Premier highlighted the need to establish an arrangement between Federal and State authorities with regard to immigration detention centres. This issue was again highlighted in the course of the Commonwealth Joint Select Committee Inquiry on Australia's Immigration Detention Network. In discussing the protests at Villawood in April 2011, the Assistant Commissioner of the NSW Police Force, Frank Mennilli, raised concerns about ongoing legal uncertainty as to the respective roles of the State and Federal authorities in managing and responding to incidents at the detention centre.

INTRODUCTION

This paper, which focuses on developments between 2008 and 2011, updates a briefing paper published by the Parliamentary Library Research Service in 2008.¹ Asylum seeker policy, as with immigration policy more broadly, falls under the jurisdiction of Commonwealth, rather than State and Territory governments. However, as with all other forms of migration to Australia, the movement of peoples to Australia as asylum seekers has a number of implications for State and Territory Governments, notably in respect to areas like housing, social services and demography. The implications of asylum seeker movements for States and Territories have received renewed attention in recent months. This follows changes in asylum seeker policy at the Federal level that have led to a reversion to onshore processing of asylum seekers who arrive by boat, a policy likely to lead to the increased placement of asylum seekers in the community for the foreseeable future. As destinations which continue to attract a significant proportion of people who migrate to Australia from overseas, developments in this Federal policy area have particular import for NSW and for Sydney.

The issue of asylum seekers has been one of the most controversial areas of national policy in the past decade or so. In the last three years there have been significant developments in Australia's policies. Much of the public and policy debate in this area revolves around the issue of asylum seekers who arrive by boat (referred to in the current policy as 'irregular maritime arrivals', or IMAs), particularly in the context of significant increases in such arrivals over the course of the last three years.² Notwithstanding this recent increase it is clear that: the majority of asylum seekers in Australia arrive by air, rather than by boat, and then claim protection; and, that in the current global context, Australia receives a relatively small number of asylum claims (whether assessed against the scale of the refugee challenge facing developing countries, or against the scale of asylum claims facing several other industrialised countries).

Due to the irregular nature of the migration path they pursue, asylum seekers who arrive by boat have for most of the last two decades been processed differently to those who arrive by air. In particular, Australia's mandatory immigration detention system and offshore processing of asylum claims have been uniquely applied to asylum seekers who arrive by boat as IMAs. While several changes have been made to these policies in recent years, federally they continue to prove intractable and highly politicised issues.

¹ K Simon, [Asylum seekers](#), NSW Parliamentary Library Research Service, Briefing Paper no. 13/08, November 2008.

² For a historical perspective on the 'four waves' of asylum seekers arriving by boat between 1976 and 2011, see: Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), August 2011, 'An historical perspective of refugees and asylum seekers in Australia 1976-1922'.

Significant developments have occurred since changes in asylum seeker policy were introduced by the Rudd Labor Government after it entered office in November 2008. Among the most significant are those developments concerning asylum seekers who arrive by boat, most notably:

- the increase in the number of asylum seekers arriving by boat;
- pressures on the immigration detention network;
- key legal rulings by the High Court that have fundamentally impacted on existing processing regimes for asylum seekers arriving by boat; and,
- policy changes in response to changing physical and legal conditions.

In light of these developments, the key policy changes at present include:

- reverting to onshore processing;
- the consistent processing of asylum seekers arriving by boat and by air under a single process, rather than the parallel processing arrangement which applied to asylum seekers who arrive by boat;
- taking children and families out of mandatory detention; and
- allowing asylum seekers to live in the community on bridging visas and in community detention.

The decision to move asylum seekers into the community has implications for State Governments, which are responsible for providing services such as health, education, policing and social welfare. The community placement policy may also have implications for local communities in which asylum seekers reside, including in respect to issues such as housing and social inclusion.

Notwithstanding the dramatic policy changes of the past year, the future of asylum seeker policy is marked by considerable uncertainty at the Federal level, with both Labor and the Coalition continuing to support mandatory detention and offshore processing of asylum seekers who arrive by boat. Whether the recent policy developments prove to be temporary arrangements rather than long term changes remains to be seen. This paper provides an overview of key developments in asylum seeker policy over the last three years.

The 'background' section of this paper provides an overview of the global context of refugee and asylum seeker movements, as well as of Australia's formal Humanitarian Program. Key developments between 2009 and December 2011 are then presented in the form of a chronology. The chronology is followed by an outline of the current policy situation in relation to asylum seekers who arrive by boat, explaining the nature of the bridging visa and community detention arrangements for this category of asylum seekers. The paper ends by discussing concerns raised by State Governments in relation to the impact on State resources of the policy decision to move asylum seekers into the community.

1. BACKGROUND

1.1 Defining terms

This section briefly discusses the legal definitions of refugees and asylum seekers.³ It does so in the knowledge that the terminology used in the public debate about asylum seekers and refugees often departs from legal definitions leading to some confusion about the issues involved. This finds expression in, for example, the conflation of several categories of people seeking protection under a broad category like 'refugees', or, in the employment of misleading terms, such as 'illegals' or 'queue jumpers'.

A refugee is defined as a person who meets the eligibility criteria for being considered a refugee under national laws and relevant international legal instruments. These are, the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and the United Nations High Commission for Refugees (UNHCR) Statute.⁴ Article 1 of the Convention Relating to the Status of Refugees, 1951, defines a refugee as a person who:

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁵

The UNHCR expands upon this legal definition, indicating that in general 'refugees' also include:

Individuals granted complementary forms of protection;⁶ or, those enjoying temporary protection.⁷ The refugee population also includes people in a refugee-like situation.⁸

³ For a more detailed discussion of the Refugee Convention see: K Simon, [Asylum seekers](#), pp. 5-7.

⁴ Ibid., p. 17; United Nations High Commission for Refugees (UNHCR), [Global Trends 2010](#), 2011, p. 19.

⁵ UNHCR, [Convention and Protocol Relating to the Status of Refugees](#), December 2010, p. 14.

⁶ Complementary protection refers to protection provided under national or regional law in countries which do not grant 1951 Convention refugee status to people who are in need of international protection against serious risks. See: E Karlsen, [Complementary protection for asylum seekers-overview of the international and Australian legal frameworks](#), Research Paper no. 7, 2009-10, 30 September 2009, Commonwealth Parliamentary Library.

⁷ Temporary protection refers to arrangements developed by States to offer protection of a temporary nature to people arriving from situations of conflict or generalized violence without the necessity for formal or individual status determination. This usually applies to situations of large-scale influx.

The distinction between refugees and other types of migrants, such as economic migrants, can sometimes appear unclear, particularly in parts of the world which face mixed flows of migrants, such as in Europe. According to the UNHCR:

An economic migrant normally leaves a country voluntarily to seek a better life. Should he or she elect to return home, they would continue to receive the protection of their government. Refugees flee because of the threat of persecution and cannot return safely to their homes in the prevailing circumstances.⁹

The term 'asylum seekers' refers to people who are seeking international protection and whose claims for refugee status are yet to be determined. The UNHCR defines an asylum seeker as:

...an individual who is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker.¹⁰

Public debates regarding asylum seekers often suffer from lack of clarity about the legal status of asylum seekers - particularly in the case of asylum seekers who arrive by boat without a valid visa, who are sometimes erroneously associated with illegality or even criminality.¹¹ Under Australia's *Migration Act 1958 (Cth)*, people in Australia who are neither citizens, nor have a valid visa are unlawful non-citizens.¹² Unlawful non-citizens may face consequences such

⁸ The term is descriptive in nature and includes groups of people who are outside their country or territory of origin and who face protection risks similar to refugees, but for whom refugee status has, for practical or other reasons, not been ascertained.

⁹ UNHCR, [Refugees and asylum seekers: protecting refugees – questions and answers](#), UNHCR website, 2011, originally cited in, J Phillips, [Asylum seekers and refugees: what are the facts?](#), Background Note, Commonwealth Parliamentary Library, 22 July 2011, p. 2. See also, E Karlsen, [Refugee resettlement to Australia: what are the facts?](#), Background Note, Commonwealth Parliamentary Library, 6 December 2011.

¹⁰ United Nations High Commission for Refugees (UNHCR), [UNHCR Master Glossary of Terms](#), June 2006. See **Appendix One** for a glossary of terms based on UNHCR definitions.

¹¹ See: A Pedersen, S Watt, S Hanser, 2006, 'The role of false beliefs in the community's and the Federal Government's attitudes toward Australian asylum seekers', *The Australian Journal of Social Issues*, vl. 41, no. 1, Autumn, pp. 105-124. This study found that amongst the most oft-cited assumptions at the root of negative perceptions of asylum seekers were: 'boat people are queue jumpers', 'asylum seekers are illegal', and 'people who arrive unauthorized are not genuine refugees'. See also, N Klocker and Kevin Dunn, 2003, 'Who's driving the asylum debate? Newspapers and government representation of asylum seekers', *Media International Australia incorporating Culture and Policy*, No. 109 - November, pp. 71-92.

¹² Section 14, [Migration Act 1958](#) (Cth). For clarification of the difference between 'citizens', 'lawful non-citizens', and 'unlawful non-citizens' see: Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), 'Evolution of the Australian Legislative Framework and Policy for

as mandatory detention or removal from Australia. Unlawful non-citizens who are seeking asylum in Australia can become lawful non-citizens by applying for and being granted a protection visa, or a bridging visa. It is important to note that it is not an offence under Australian law to become an unlawful non-citizen.¹³ Moreover, Australia does not criminalise the act of seeking asylum.¹⁴

The right of people at risk of persecution to seek asylum is recognised in international law.¹⁵ Article 14 (1) of the Universal Declaration of Human Rights states that:

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

The UNHCR highlights that under the terms of the 1951 Refugee Convention,

refugees should not be penalized for their illegal entry or stay...Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum.¹⁶

In Australia, the majority of unlawful non-citizens are people who entered the country on a valid visa and later overstayed their visa, with visa overstayers far exceeding the number of asylum seekers in Australia.¹⁷ The majority of asylum seekers initially came to Australia by air on a valid visa and then sought protection.¹⁸ Under the *Migration Act 1958* unlawful non-citizens must be detained.¹⁹ Australia appears to be the only country in the world which subjects

Immigration Detention', op. cit., p. 3.

¹³ J Vrachnas, M Bagaric, P Dimopoulos, A Pathinayake, *Migration and refugee law: principles and practice in Australia*, 3rd ed., Cambridge University Press, Port Melbourne, Vic, p. 165.

¹⁴ J Phillips, [Asylum seekers and refugees: what are the facts?](#), op. cit., p. 4.

¹⁵ DIAC, [Fact Sheet 61 – Seeking asylum within Australia](#), 2011.

¹⁶ UNHCR, [Convention and Protocol Relating to the Status of Refugees](#), p. 3. See Article 31 of the Convention Relating to the Status of Refugees, 1951. This recognizes that prevailing circumstances may compel refugees to breach immigration rules in order to seek asylum, J Phillips, [Asylum seekers and refugees: what are the facts?](#), op. cit., pp. 2-3.

¹⁷ DIAC, [Fact Sheet 86-Overstayers and other unlawful non-citizens](#), 2009, cited in J Phillips, [Asylum seekers and refugees: what are the facts?](#), op. cit., p. 3. Indeed, a report in November 2011 indicated that of the 58,400 foreigners estimated to be living illegally in the community the vast majority had initially entered Australia on tourist or work visas, with the largest groups being Chinese, Americans, Malaysians, British and South Koreans, P Mickelborough, '58, 000 illegals in Australia', *Daily Telegraph*, 21 November 2011, p. 5.

¹⁸ Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship Supplementary Submission](#), September 2011, p. 19.

¹⁹ Sections 189, 190, cited in J Vrachnas, M Bagaric, P Dimopoulos, A Pathinayake,

all unlawful non-citizens (including asylum seekers) to a policy of mandatory detention.²⁰

1.2 The Global Context

Refugee and asylum seeker movements are global phenomena resulting from a complex range of circumstances that can lead to the displacement of peoples, including, wars, civil unrest and persecution. Australia's policy response to the issue of asylum seekers occurs in the context of global movements of refugees and asylum seekers.²¹ DIAC explains that, while refugee movements reflect longer term population movements, asylum seeker numbers reflect the immediate impacts of humanitarian situations around the world.²² As noted by DIAC in its submission to the Senate Joint Select Committee inquiry into Australia's immigration detention network:

While the global number of refugees has decreased from a peak of around 18 million in 1992, the evolving and changing security situation in many parts of the world has meant that refugee outflows and internal displacement remain an enduring feature of the contemporary geopolitical landscape.²³

Moreover, as the UNHCR notes, the reasons for displacement globally are getting ever more complex:

[m]any factors are limiting the protection space available for people of concern...These include mixed migratory flows and accelerated urbanisation; the growth of displacement linked to climate change and natural disasters; and the changing nature and complexity of conflicts.²⁴

Migration and refugee law: principles and practice in Australia, op. cit., p. 173.

²⁰ J Menadue, A Keski-Nummi and K Gauthier, [A new approach—breaking the stalemate on asylum seekers and refugees](#), Centre for Policy Development, Occasional paper no. 13, Sydney, 2011, p. 31, cited in J Phillips and H Spinks, [Immigration Detention in Australia](#), Background Note, Commonwealth Parliamentary Library, 22 December 2011, p. 2.

²¹ The need to look beyond a 'myopically Australia based approach only' to a global perspective in analyzing refugee and asylum issues was referred to by the Secretary of DIAC, Andrew Metcalfe in February 2012, Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), Official Committee Hansard, 13 February 2012, Canberra, p. 22-23.

²² Ibid., p. 12.

²³ Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), August 2011, 'Global Population Movement: Sources and Destinations', p. 6.

²⁴ United Nations High Commission for Refugees (UNHCR), [Global Appeal 2011 – update](#), 2011, p. 31. See for example: Foresight, 2011, [Migration and global environmental change](#), Government Office for Science (UK). DIAC Secretary, Andrew Metcalfe, acknowledged that mixed flows in irregular migration continues to be a challenge for governments, Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit.,

In its *Global Trends 2010* report, the UNHCR reported that there were 43.7 million people worldwide who were forcibly displaced due to conflict and persecution, including: 15.4 million refugees, 27.5 million internally displaced people (IDPs), and more than 837, 500 individuals whose asylum applications had not yet been adjudicated by the end of the reporting period.²⁵ According to the UNHCR, this was the highest figure in over fifteen years.

Origin countries of refugees

As the following graph indicates, Afghanistan was the leading country of origin for refugees in 2010 - reflecting trends in previous years – followed by Iraq.²⁶ These two countries alone account for 45% of all refugees under the UNHCR's responsibility worldwide.

Major source countries of refugees: end 2010²⁷



(Source: UNHCR, [Global Trends 2010](#), p. 15)

Countries of asylum

In releasing its statistics on asylum seeker and refugee movements in 2010, the United Nations High Commissioner for Refugees, Antonio Guterres, noted that '[i]n today's world there are worrying misperceptions about refugee movements and the international protection paradigm'.²⁸ The fact is that the vast majority of

p. 68.

²⁵ UNHCR, [Global Trends 2010](#), 2011, p. 5.

²⁶ Ibid., p. 15.

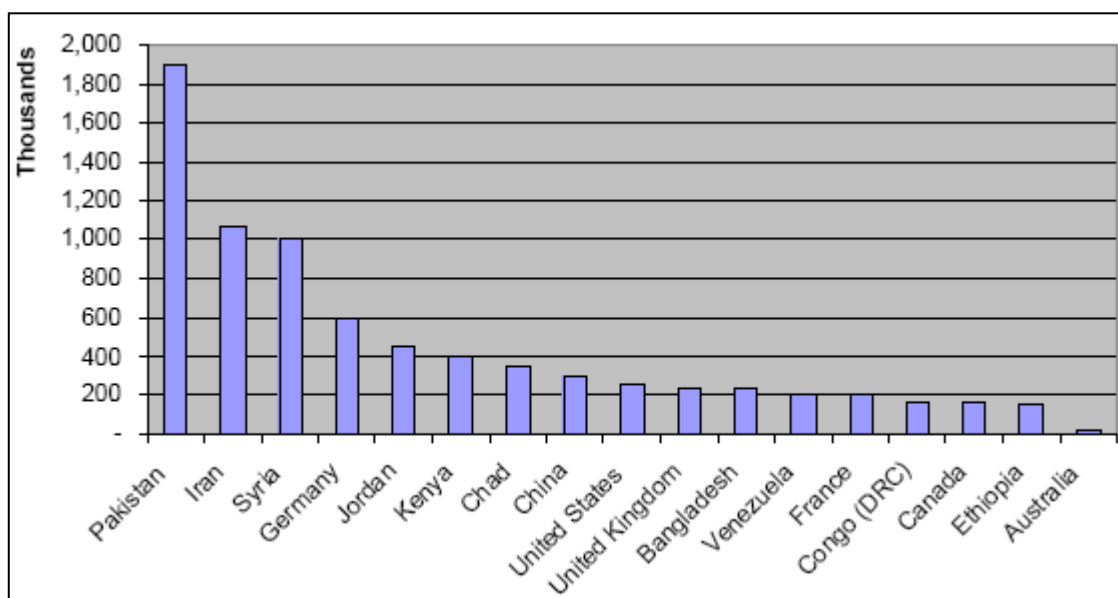
²⁷ (a)-includes people in a refugee-like situation; (b) The 300,000 Vietnamese refugees are well integrated and in practice receive protection from the Government of China.

²⁸ UNHCR, [UNHCR report: 80% of the world's refugees in developing countries](#), media release, 20 June 2011.

the world's refugees remain in their region of origin rather than seeking asylum elsewhere, with three quarters of the world's refugees residing in a neighbouring country.²⁹ In 2010, the major refugee source regions of the world, including the Asia Pacific, Sub-Saharan Africa, the Middle East and North Africa housed 76-92% of refugees within the region. As a result of this, in 2010 four fifths of the world's refugee population (8.5 million people) was housed in developing countries, with the 49 least developed countries in the world providing refuge to 19% - about 2 million refugees. Upon releasing the *Global Trends 2010* report in June 2011, the UNHCR stated that the report revealed 'deep imbalance in international support for the world's forcibly displaced, with a full four-fifths of the world's refugees being hosted by developing countries'.³⁰

The following graph indicates the ten major refugee-hosting countries in the world, which account for 62% of refugees under the UN's mandate, as well as other select countries, including Australia.³¹

Global refugees by main countries of asylum: end 2010



(Source: Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), August 2011, 'Global Population Movement: Sources and Destinations', p. 11)³²

²⁹ Ibid., p. 11. For a breakdown of the 4,014,115 million refugees in Asia and the Pacific based on UNHCR data see: Senate Legal and Constitutional Affairs Committee, [Question taken on notice, Budget Estimates hearing, 24 May 2011, Immigration and Citizenship Portfolio \(BE11/0237\)](#), 2011.

³⁰ UNHCR, [UNHCR report: 80% of the world's refugees in developing countries](#), op. cit.

³¹ Ibid., p. 14.

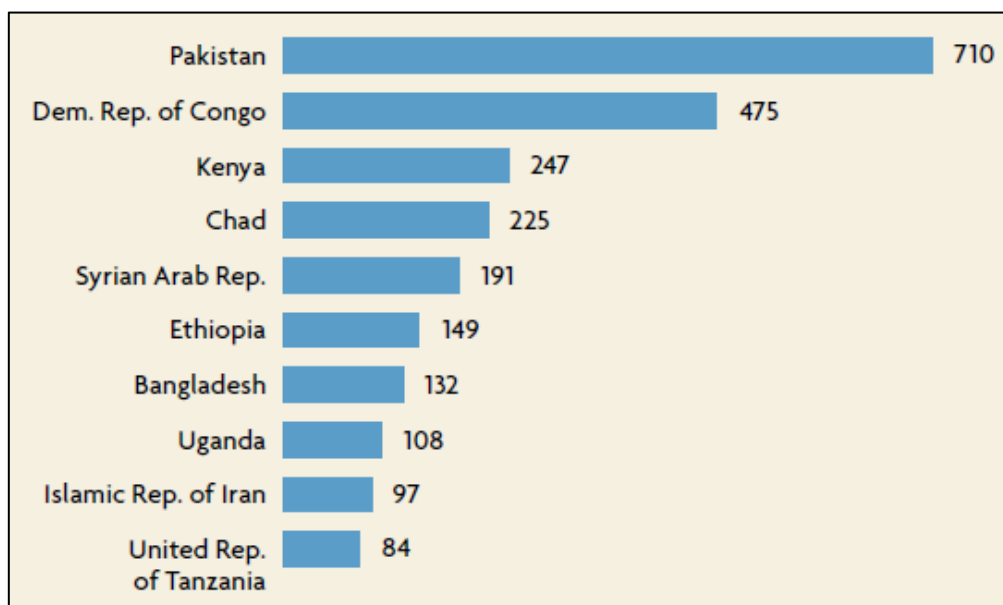
³² See also: UNHCR, [Global Trends 2010](#), p. 14.

The UNHCR *Global Trends 2010* report highlights that there are significant disparities in the relative capacities of different countries to absorb and support refugees. As explained in the report:

Among the 20 countries with the highest number of refugees per 1 USD GDP per capita, all are developing countries, including 12 Least Developed Countries. Moreover, more than 4.4 million refugees, representing 42 per cent of the world's refugees, resided in countries whose GDP per capita was below USD 3,000.³³

The following graph indicates the countries with the highest number of refugees compared to the capacity of their respective national economies.

Number of refugees per 1 USD GDP (PPP) per capita – 2010



(Source: UNHCR, [Global Trends 2010](#), p. 12)

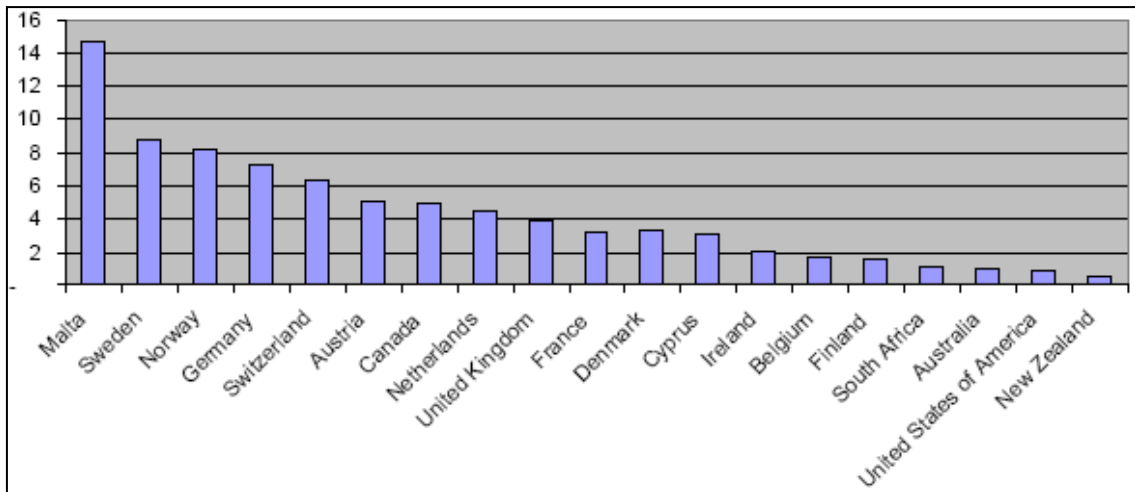
The report notes that the developed country with the highest number of refugees under this calculation is Germany, with 17 refugees per 1 USD GDP (PPP), placing it 25th in the world.³⁴ Compared to these countries, Australia ranked 79th globally, with 0.6 refugees to 1 USD GDP (PPP) per capita.

As the following graph indicates, among *industrialised* countries, European countries had the highest refugee populations per capita in 2010.

³³ UNHCR, [Global Trends 2010](#), op. cit., p. 12.

³⁴ Ibid.

Refugee populations per 1000 inhabitants: selected industrialised countries 2010



(Source: Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), August 2011, 'Global Population Movement: Sources and Destinations', p. 15)

Durable solutions

The UNHCR and the international community pursue three durable solutions for refugees, namely: voluntary repatriation to the home country; permanent integration mechanisms in the country of asylum;³⁵ or, resettlement to another country.³⁶

Historically, voluntary repatriation has been the durable solution that has benefited the greatest number of refugees. However, the rate of voluntary repatriations has been declining since 2004, with only 197,000 people returning to their country of origin in 2010 – the lowest level in over twenty years.³⁷ Afghanistan continues to be the main country of return, with almost 5.5 million Afghan refugees having returned home since 2002.³⁸

A relatively small number of refugees benefit from resettlement, with only 1% of refugees being resettled in 2010, and only 444,000 over the past five years, compared to 2.5 million repatriations in that time. 98,800 refugees were

³⁵ The UNHCR notes: 'Local integration is a complex and gradual process which comprises distinct but related legal, economic, social and cultural dimensions and imposes considerable demands on both the individual and the receiving society. In many cases, acquiring the nationality of the country of asylum is the culmination of this process. UNHCR estimates that, during the past decade, 1.1 million refugees around the world became citizens in their country of asylum',

³⁶ UNHCR, [Global Trends 2010](#), op. cit., p. 17.

³⁷ Ibid., p. 6.

³⁸ Ibid., p.18.

admitted for resettlement by 22 resettlement countries (including Australia) in 2010, compared to 112,400 in 2009.³⁹ Of these the United States accepted the highest number, resettling over 71,000 refugees.⁴⁰ DIAC notes that in 2010 Australia was among the top three resettlement countries, after the US and Canada.⁴¹ The majority of refugees resettled through the UNHCR's resettlement program in 2010 came from Myanmar (19,400), Iraq (16,000), Bhutan (14,800), Somalia (5,400), the Democratic Republic of the Congo (4,500), and Eritrea (3,300). The UNHCR states in relation to resettlement: '[o]nly a small number of nations offer resettlement programmes...The number of resettlement places available has neither kept pace with global resettlement needs, nor with increased submissions by UNHCR.'⁴²

Asylum applications: global

In 2010, the UNHCR estimated that 845, 800 individual applications for asylum were submitted to governments or UNHCR offices in 166 countries. DIAC notes that asylum application numbers are higher in countries that have a formal refugee status determination process, whereas, in countries like Pakistan and Iran that have a less formal processes asylum seeker numbers are lower relative to the numbers of refugees in these countries.⁴³ As was the case in the previous three years, South Africa received the highest number of asylum claims in 2010 (180, 600) – constituting one fifth of individual applications globally, followed by USA (54,300) and France (48, 100).⁴⁴

³⁹ Ibid., p. 19.

⁴⁰ UNHCR, [UNHCR calls for more resettlement places and better integration support for resettled refugees](#), press release, 4 July 2011.

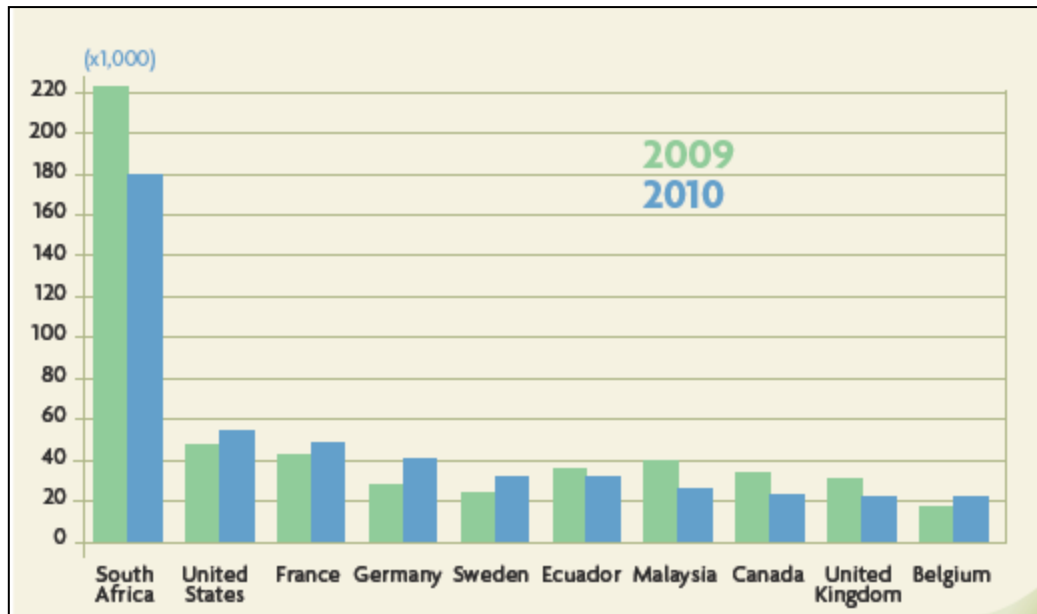
⁴¹ Department of Immigration and Citizenship (DIAC), [Annual Report 2010-11](#), September 2011, p. 98.

⁴² UNHCR, [Global Trends 2010](#), op. cit., p. 18. The UN High Commissioner for Refugees, Antonio Guterres, called for increased resettlement quotas from the industrialised world to redress the imbalance in global distribution of refugees, UNHCR, [UNHCR report: 80% of the world's refugees in developing countries](#), op. cit.

⁴³ Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), op. cit., 'Global Population Movement: Sources and Destinations', p. 12.

⁴⁴ UNHCR, [Global Trends 2010](#), op. cit., p. 25.

Main destination countries for new asylum seekers: 2009-2010



(Source: UNHCR, [Global Trends 2010](#), p. 26)

The main source countries for those making individual asylum claims in 2010 were Zimbabwe, Somalia, Democratic Republic of Congo, Afghanistan, Colombia, Serbia (and Kosovo), and Myanmar.⁴⁵

In 2010 Australia experienced a 33% increase in asylum claims, compared to the previous year – receiving 8, 250 asylum claims. According to the UNHCR, '[t]he 2010 figure was well below levels reported by other industrialised and non-industrialised countries, putting Australia at 15 on the list of asylum receiving industrialised countries'.⁴⁶

UNHCR figures also reveal that between 2001 and 2010 there was a general decline in asylum applications received among the 44 industrialised countries which report regularly to the UNHCR.⁴⁷ However, UNHCR figures indicate that overall, industrialised countries experienced an increase in asylum applications in the first half of 2011, estimating that the total number of applications lodged by the end of 2011 may represent the highest figure in eight years.⁴⁸

⁴⁵ Ibid., p. 26.

⁴⁶ Ibid.

⁴⁷ UNHCR, [Asylum-seeker numbers nearly halved in last decade, says UNHCR](#), press release, 28 March 2011. The industrialized countries surveyed include: The 27 European Union countries, Albania, Australia, Bosnia and Herzegovina, Canada, Croatia, Iceland, Japan, the Republic of Korea, Liechtenstein, Montenegro, New Zealand, Norway, Serbia, Switzerland, Turkey, the United States and the former Yugoslav Republic of Macedonia.

⁴⁸ UNHCR, [Asylum applications in industrialized countries jump 17 per cent in first-half](#)

1.3 Australia's Humanitarian Program

Asylum seekers and refugees are admitted to Australia through Australia's Humanitarian Program.⁴⁹ The Humanitarian Program has both onshore and offshore components. Asylum seekers who come to Australia and then seek protection, are assessed under the *onshore* component of the Humanitarian Program. However, the majority of humanitarian entrants enter Australia through the *offshore* resettlement component of the Program (under which they are granted visas before entering Australia).⁵⁰ The offshore component of the Humanitarian Program is not to be confused with the offshore *processing* of asylum seekers who arrive by boat on Christmas Island.⁵¹ Asylum seekers who undergo offshore processing on Christmas Island and who succeed in their claims for asylum are counted as part of the onshore component of the Humanitarian Program.⁵²

Between 13,000 and 14,000 visas have been granted under the Humanitarian Program in each of the program years between the 2008-09 and 2010-11.⁵³

[2011](#), media release, 18 October 2011; UNHCR, [Asylum levels and trends in industrialized countries](#), October 2011, p. 2. In the first six months of 2011 Australasia was reportedly the only region among industrialized countries to see a decline in asylum applications: UNHCR, [Asylum applications in industrialized countries rise in the first six months in 2011](#), October 2011; UNHCR, *Asylum levels and trends in industrialized countries*, op. cit., p. 8.

⁴⁹ See **Appendix Two** for a graph indicating the size and composition of Australia's Humanitarian Program between 1977-78 and 2009-10.

⁵⁰ DIAC, [Fact Sheet 61 – Seeking asylum within Australia](#), November 2011.

⁵¹ E Karlsen, J Phillips, and E Koleth, [Seeking asylum: Australia's humanitarian program](#), Background Note, Commonwealth Parliamentary Library, 2011, p. 2.

⁵² Australia meets its international obligations under the 1951 Convention Relating to the Status of Refugees through assessing claims for protection under the *onshore* component of the Humanitarian Program, rather than through voluntary participation in UNHCR's refugee resettlement program under the offshore component of the Humanitarian Program, *ibid.*, p.1.

⁵³ Between 2001-02 and 2010-11 the Humanitarian Program intake on average comprised 8% of Australia's total permanent settler intake (that is, including skilled and other migrants entering through the annual Migration Program intake). This compares with the Humanitarian intake comprising between 24% and 48% of the total permanent settler intake in the post-World War II years between 1948-49 and 1950-51, and comprising between 13% and 25% of the total permanent settler intake in the years between 1977-78 and 1984-85, Refugee Council of Australia (RCOA), [Australia's Refugee and Humanitarian Program 2012-13: National and global statistics](#), report prepared for DIAC, January 2012, pp. 5, 8, 9. 4.

Humanitarian Program grants by category: 2008-09 to 2010-11⁵⁴

Category	2008-09	2009-10	2010-11
Refugee	6,499	6,003	5,998
Special Humanitarian	4,511	3,233	2,973
Onshore	2,492	4,534	4,828
Temporary Humanitarian Concern	5	0	0
TOTAL	13,507	13,770	13,799

(Source: DIAC, [Fact Sheet 60 – Australia's Refugee and Humanitarian Program](#), November 2011).⁵⁵

Offshore resettlement component

The offshore resettlement component of the Humanitarian Program encompasses visas granted under the refugee category and subclass 202 visas granted under the Special Humanitarian Program (SHP).⁵⁶

From year to year the size and composition of the offshore resettlement component changes 'in response to evolving humanitarian situations and changes to the global need for resettlement.'⁵⁷

Between 2004-05 and 2010-11 the offshore resettlement program shifted from a strong focus on Africa (between 2004-05 and 2006-07), to a greater focus in

⁵⁴ This table updates the data in the table on page 17 of K Simon, [Asylum seekers](#), op. cit.

⁵⁵ The 'onshore' category includes protection visas and onshore humanitarian visa grants that are countable under the Humanitarian Program. The number of refugees in 2008-09 includes a one-off allocation of 500 refugee places for Iraqis.

⁵⁶ DIAC, [The 2010-11 Humanitarian Program, Outcomes for 2010-11](#), June 2011, p. 3. According to DIAC, the refugee category is intended '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.' The SHP category is intended 'for people outside their home country who are subject to substantial discrimination amounting to gross violation of human rights in their home country, and immediate family of persons who have been granted protection in Australia. Applications for entry under the SHP must be supported by a proposer who is an Australian citizen, permanent resident or eligible New Zealand citizen, or an organisation that is based in Australia', DIAC, [Fact Sheet 60 – Australia's Refugee and Humanitarian Program](#), November 2011.

⁵⁷ DIAC, [The 2010-11 Humanitarian Program, Outcomes for 2010-11](#), June 2011, p. 2. For an indication of changes in the size of the offshore resettlement intake relative to the size of the Australian population between 1948-49 and 2010-11, see: RCOA, [Australia's Refugee and Humanitarian Program 2012-13: National and global statistics](#), op. cit., p. 15.

later years on the Middle East, South-West Asia and Asia more broadly.⁵⁸ As with the previous three years, in 2010-11 the resettlement program drew from the key regions of the Middle East/South West Asia (mainly Iraqis and Afghans from Iran and Pakistan), Asia (mainly Burmese from the Thai-Burma border, India and Malaysia, and Rohingya from Bangladesh, and Bhutanese from Nepal) and Africa (mainly refugees from Democratic Republic of Congo, Ethiopians and Eritreans). In so doing it reflected 'UNHCR's global priorities with a focus on those from protracted situations and others in critical need, including urban situations'.⁵⁹

Offshore grants by top 10 countries of birth: 2010-11

	Refugee	SHP	Total
Iraq	1,114	1,037	2,151
Burma	1,393	50	1,443
Afghanistan	423	604	1,027
Bhutan	1,001		1,001
Congo (DRC)	514	51	565
Ethiopia	297	84	381
Sri Lanka	78	211	289
Iran	141	130	271
Sudan	61	182	243
Somalia	144	46	190
Others	832	578	1,410
TOTAL	5,998	2,973	8,971

(Source: DIAC, [The 2010-11 Humanitarian Program, Outcomes for 2010-11](#), June 2011, p. 2)

Onshore component

The onshore component of the Humanitarian Program concerns people who have arrived in Australia – either with a valid visa, or without a valid visa, by sea or by air – and then make an application for protection. Claims for protection are assessed to determine whether they engage Australia's international obligations under the *Refugee Convention 1951* and in accordance with the *Migration Act 1958 (Cth)*. Applicants whose claims for asylum are successful are granted permanent protection visas upon meeting certain health, character and security requirements. The onshore component of the Humanitarian Program includes those successful applicants who arrived at excised offshore places in Australia as 'irregular maritime arrivals' (IMAs) and were processed on Christmas Island as 'offshore entry persons'.⁶⁰

⁵⁸ See: Figure 2.2 'Offshore Humanitarian visa grants by region 2004-05 to 2009-10' in DIAC, [Population Flows immigration aspects 2009-2010](#), 2011, p. 30; Figure 9 'Offshore Humanitarian Program visa grants – regional trend', in DIAC, [Annual Report 2010-11](#), op. cit., p. 113.

⁵⁹ DIAC, [Annual Report 2010-11](#), op. cit., p. 98.

⁶⁰ E Karlsen, J Phillips, and E Koleth, [Seeking asylum: Australia's humanitarian program](#),

Prior to the implementation of a major policy change announced by the Federal Government on 25 November 2011, to move to a single protection visa processing system for both boat and air arrivals, different processing arrangements applied to asylum seekers in Australia, depending on their mode of arrival.⁶¹ Under previously existing arrangements, asylum seekers who were not IMAs were able to make a direct application for a protection visa. On the other hand, asylum seekers who arrived by boat as IMAs were prohibited from directly making an application for a protection visa. Instead, IMAs had to undergo a non-statutory refugee status determination process (known as a Refugee Status Assessment (RSA) until 28 February 2011, and subsequently a Protection Obligation Determination (POD)).⁶²

(i) *Asylum application numbers: air arrivals and boat arrivals*

In its analysis of unauthorised air and boat arrivals between 1991-2 and 2010-11, DIAC states:

The majority of onshore Protection visa applications are made by people who arrive lawfully in Australia on valid visas or by unauthorised air arrivals. Figure 4 compares unauthorised air and boat arrivals for the period 1991–92 to 2010–11. While the periods of high IMA arrivals are clearly visible, the figure also demonstrates that the number of unauthorised air arrivals generally exceeds the number of boat arrivals.⁶³

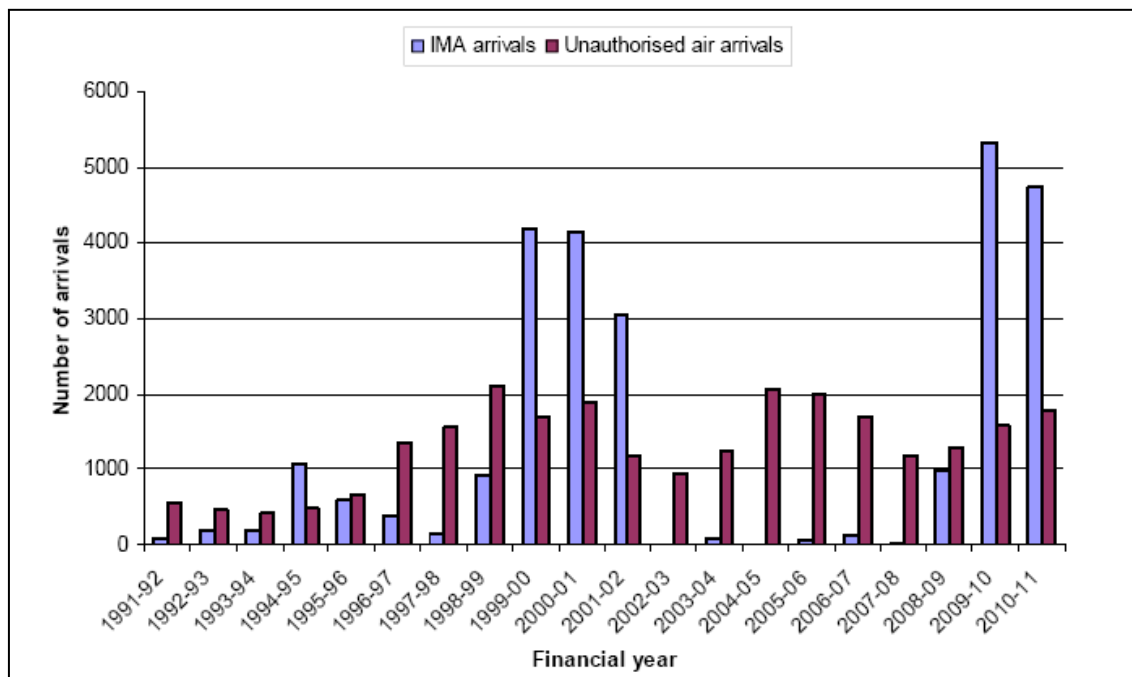
op. cit., p. 18.

⁶¹ C Bowen (Minister for Immigration and Citizenship), [Bridging visas to be issued for boat arrivals](#), media release, 25 November 2011.

⁶² Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), op. cit., 'Global Population Movement: Sources and Destinations', p. 32-33. For a detailed explanation of the parallel processing arrangements see: Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship Supplementary Submission](#), September 2011, pp. 46-50.

⁶³ Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship Supplementary Submission](#), op. cit., p. 19. See also, J Phillips, [Asylum seekers and refugees: what are the facts?](#), op. cit., p. 6; K Koser, [Responding to boat arrivals in Australia: time for a reality check](#), Lowy Institute for International Policy, December 2010, p. 5.

Comparison of irregular maritime arrivals and unauthorised air arrivals 1991-92 to 2010-11



(Source: Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship Supplementary Submission](#), September 2011, p. 20)

As the following table indicates, despite fluctuations in the numbers over the course of the last decade, the majority of asylum *applications* (as opposed to *arrivals*) continue to be made by those who did not arrive by boat.⁶⁴ The table also shows that there are notable increases in the respective number of applications by asylum seekers arriving by boat (Irregular Maritime Arrivals), as well as those not arriving by boat (non-IMAs). According to DIAC the increase in asylum applications by non-IMAs coincides with a significant increase in the number of international students arriving in Australia, with asylum applications by international students constituting 42% of total applications in 2010-11.⁶⁵

⁶⁴ Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship Supplementary Submission](#), September 2011, p. 19; E Karlsen, J Phillips, and E Koleth, [Seeking asylum: Australia's humanitarian program](#), op. cit., p. 14.

⁶⁵ DIAC, [Asylum Trends Australia 2010-11 Annual Publication](#), 2011, p. 5.

Onshore asylum applications 2001-02 to 2010-11

Program year	Non-IMA Protection visa (PV) applications Lodged		IMA refugee status determination requests received		Total
	No	Per cent of total applications	No	Per cent of total applications	
2001-2	7026	76	2222	24	9248
2002-03	4959	99	60	1	5019
2003-04	3485	98	87	2	3572
2004-05	3062	95	146	5	3208
2005-06	3191	97	101	3	3292
2006-07	3723	99	23	1	3746
2007-08	3986	99	21	1	4007
2008-09	5072	88	690	12	5762
2009-10	5987	57	4591	43	10 578
2010-11	6316	55	5175	45	11 491

(Source: DIAC, [Asylum Trends Australia 2010-11 Annual Publication](#), 2011, p. 2)

The increase in the percentage of asylum applications from asylum seekers who arrived by boat between 2008-09 and 2009-10 reflects an increase in the number of boat arrivals after 2009.⁶⁶

Boat arrivals: 2005-06 – 2010-11⁶⁷

Year	Number of boats	Number of people
2005-06	8	61
2006-07	4	133
2007-08	3	25
2008-09	23	1033
2009-10	118	5609
2010-11	89	4940

(Source: J Phillips and H Spinks, [Boat arrivals in Australia since 1976](#), Background Note, Commonwealth Parliamentary Library, July 2011, p. 19).⁶⁸

There are notable differences in the characteristics of asylums seekers arriving by air and those arriving by boat. Discussed below are differences in the main

⁶⁶ For an analysis of boat arrivals in Australia see: J Phillips and H Spinks, [Boat arrivals in Australia since 1976](#), Background Note, Commonwealth Parliamentary Library, July 2011, Appendix A, pp. 18-20.

⁶⁷ This table updates figures provided in K Simon, [Asylum seekers](#), op. cit., p. 9.

⁶⁸ This table contains the number of boat arrivals by financial year. For the number of boat arrivals by calendar year please refer to the last entry in the month of December in the relevant year in **Appendix Six** (please notes that Appendix Six only appears in the electronic version of this paper).

countries of citizenship and the application success rates of asylum seekers arriving by boat and those arriving by air.

(ii) *Countries of citizenship of asylum applicants*

Top 5 countries of citizenship of asylum applicants: non-IMAs and IMAs

	non-IMAs (applications lodged)	IMAs (refugee status determination requests)⁶⁹
2008-09	China (1186) Sri Lanka (478) India (353) Zimbabwe (317) Iraq (233)	Afghanistan (506) Sri Lanka (78) Iraq (59) Stateless (25) Iran (9)
2009-10	China (1293) Fiji (563) Zimbabwe (378) Iran (378) Pakistan (349)	Afghanistan (2650) Sri Lanka (919) Stateless (460) Iraq (248) Iran (197)
2010-11	China (1122) India (555) Pakistan (547) Egypt (427) Iran (384)	Afghanistan (1612) Iran (1549) Stateless (895) Iraq (542) Sri Lanka (362)

(Source: DIAC, [Asylum Trends Australia 2010-11 Annual Publication](#), 2011, pp. 7, 26)

The figures above indicate that a significant proportion of asylum seekers who arrive by boat come from prolonged situations of conflict such as in Afghanistan, Sri Lanka, and Iraq,⁷⁰ suggesting that there are strong links between the nature of the circumstances that asylum seekers are fleeing, the limitations on the options available to them to flee those circumstances and their subsequent mode of arrival in Australia to make their claim for protection. In this context it is relevant to recall that both the UNHCR and Refugee Council of Australia (RCOA) have highlighted that asylum seekers may in some instances be driven to pursue irregular avenues of migration and travel without appropriate

⁶⁹ RCOA recently identified the growing number of asylum seekers who are stateless as an area of asylum policy that is not being adequately addressed, Refugee Council of Australia (RCOA), [Australia's Refugee and Humanitarian Program 2012-13: Community views on current and future directions](#), report prepared for DIAC, January 2012, op, p. 43.

⁷⁰ For global threat assessments of security conditions in countries like Afghanistan Iraq, Iran, and Sri Lanka which are referred to by DIAC in analyzing refugee flows see Minority Rights Group International, [State of the Worlds Minorities Reports](#), cited in Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), op. cit., 'Global Population Movement: Sources and Destinations', pp. 19, 21, 23, 27, 29 and 36. For example, according to DIAC the security situation in Afghanistan deteriorated in 2006, and continued to decline in the three years to 2011, suggesting the likelihood of continued or increased refugee flows out of Afghanistan.

documentation like a visa, due to conditions of violence and persecution prevailing in their country of origin or residence.⁷¹

(iii) *Application success rates of asylum applicants*

Prior to the Federal Government's decision in October 2011 to move to onshore processing of all asylum claims, irrespective of mode of arrival, the offshore processing regime effectively created a 'two-tier system' whereby asylum seekers arriving by air were treated and processed differently to those arriving by boat.⁷² The majority of asylum seekers arriving by air lived in the community while their claims for asylum were processed. In contrast, those arriving by boat, who under section 46A of the *Migration Act* were not able to apply for a protection visa until they underwent an initial non-statutory refugee status determination process, after which they may be permitted by the Minister to apply for protection visas. They were also placed in mandatory immigration detention while their claims for protection were processed.⁷³ The reasons evoked by successive governments for subjecting asylum seekers who arrive by boat to mandatory detention have included:

- that unlike those who had arrived in Australia with a visa, unauthorised arrivals had 'bypassed the offshore entry processes required by Australia's universal visa system';
- the need for secure detention to prevent asylum seekers who arrived by boat from absconding;
- to 'support the integrity of Australia's immigration program'; and,
- to 'ensure the effective control and management of Australia's borders'.⁷⁴

Statistics reveal that asylum seekers arriving by boat have a higher rate of succeeding in their claims for protection, as compared to asylum seekers who

⁷¹ UNHCR, [The detention of refugees and asylum-seekers by reason of their unauthorised entry or presence](#), 2007, p. 1; J Phillips, [Asylum seekers and refugees: what are the facts?](#), op. cit., p. 3. See also: Refugee Council of Australia (RCOA), [Australia's Refugee and Humanitarian Program 2012-13: Community views on current and future directions](#), op. cit., pp. 3, 11-12.

⁷² J Gillard (Prime Minister), C Bowen (Minister for Immigration and Citizenship), [Joint Press Conference with Julia Gillard - Prime Minister of Australia and Chris Bowen MP - Minister for Immigration and Citizenship](#), media release; AHRC, [Immigration detention and offshore processing on Christmas Island](#), 2009, pp. 1 5-16, cited in, E Karlsen, J Phillips, and E Koleth, [Seeking asylum: Australia's humanitarian program](#), op. cit., p. 19.

⁷³ E Karlsen, J Phillips, and E Koleth, [Seeking asylum: Australia's humanitarian program](#), op. cit., p. 18. 'IMAs first have their claims considered, and if found to be a refugee, are then eligible to apply for a Protection visa, after the Minister has exercised his non-compellable public interest power under s46A(2) of the Migration Act to allow a visa application to be made', DIAC, [Population flows immigration aspects, 2009-2010 edition](#), op. cit., p. 32.

⁷⁴ J Phillips and H Spinks, [Immigration Detention in Australia](#), op. cit., p. 7.

arrive by air.⁷⁵ In the past decade or so, between 70 and 97% of asylum seekers who arrived by boat have been found to be refugees, in contrast to 20 to 30% of asylum seekers who arrive by air.⁷⁶

Between July 2008 and June 2009, of 217 non-statutory Refugee Status Assessments completed for those asylum seekers who arrived by boat and were processed on Christmas Island, 206 (95%) were approved, resulting in the grant of protection visas, while 11 were refused.⁷⁷ Of the 2,914 non-statutory Refugee Status Assessments completed in 2009-10, 2126 (73%) were found to be refugees, while 788 were found not to be refugees.⁷⁸ Among asylum seekers who arrived by boat primary protection visa grant rates were relatively high in 2009-10: Afghanistan (77.9%), Sri Lanka (76.7%), Stateless (67.3%), Iraq (60.3%) and Iran (52.1%).⁷⁹ However, following a surge in boat arrivals in 2010, in 2010-11 the primary protection visa grant rate for these countries declined: Afghanistan (37.7%), Sri Lanka (46.4%), Stateless (42%), Iraq (39.6%), Iran (28.4%).

Over the last three years, the rate of non-IMA asylum applications which resulted in the granting of a protection visa in the primary decision making stage declined from 34.9% in 2008-09 and 36% in 2009-10 to 25.3% in 2010-11.⁸⁰ Interestingly, applicants from the main source country for non-IMA asylum applications - China – had relatively low primary grant rates of 14.5% in 2008-09, 19.9% in 2009-10 and 10.6% in 2010-11.⁸¹ At the same time, non-IMA applicants from Iran had primary grant rates of 83.5% in 2008-09, 88.1% in 2009-10, and 78.5% in 2010-11.⁸² These comparative figures are also reflected in the final protection visa grant rates for non-IMA applicants who are granted protection visas on appeal. Applicants from countries like Iran and Iraq have amongst the highest final grant rates, while applicants from countries like China,

⁷⁵ J Phillips, [Asylum seekers and refugees: what are the facts?](#), op. cit., pp. 8-10.

⁷⁶ Ibid. This was recently confirmed by the Secretary of DIAC, who stated: 'Our recent experience is that the majority of irregular maritime arrivals are found to be refugees and are allowed to apply for protection visas unless there are exceptional circumstances,' A Metcalfe, [Opening Statement to Joint Select Committee on Australia's Immigration Detention Network](#), Parliament House, Canberra, 16 August 2011. See also, K Koser, [Responding to boat arrivals in Australia: time for a reality check](#), op. cit., p. 6.

⁷⁷ DIAC, [Annual Report 2008-09](#), 2009, p. 96.

⁷⁸ DIAC, [Annual Report 2009-10](#), p. 119.

⁷⁹ DIAC, [Asylum Trends Australia 2010-11 Annual Publication](#), 2011, op cit., p. 31.

⁸⁰ DIAC, [Asylum Trends Australia 2010-11 Annual Publication](#), 2011, p. 12.

⁸¹ Ibid., p. 13.

⁸² Ibid.

Fiji and India, who make among the highest number of claims, have relatively low final grant rates.⁸³

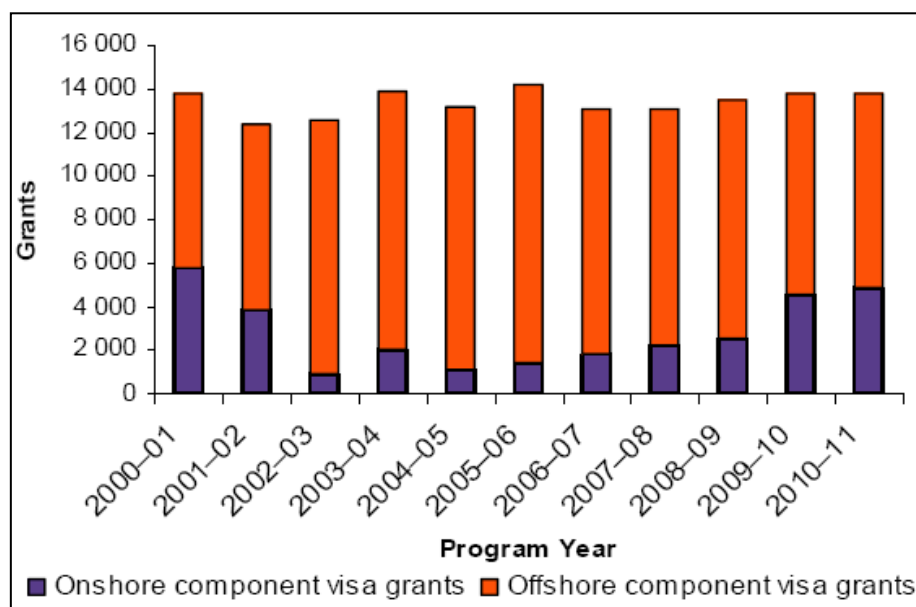
Relationship between the onshore and offshore components of the Humanitarian Program

Under changes introduced by the Howard Government in 1996, for the first time a link was established between the number of people accepted under the offshore refugee and humanitarian intake and the number given onshore protection, with both components being counted together under the Humanitarian Program.⁸⁴ While the management of these two components within the Humanitarian intake has varied over time, as the Secretary of the Department of Immigration and Citizenship (DIAC), Mr Andrew Metcalfe, recently stated:

For many years now, governments have set the levels of the refugee and humanitarian programs and indicated that visas granted to onshore asylum seekers would reduce the number of visas available to refugees overseas on a one-for-one basis.⁸⁵

The following figure indicates the relative sizes of the onshore and offshore components of the Humanitarian Program over the last decade.

Humanitarian Program visa grants – onshore and offshore: 2000-01 to 2010-11



⁸³ Ibid., pp. 21, 22.

⁸⁴ E Karlsen, J Phillips, and E Koleth, [Seeking asylum: Australia's humanitarian program](#), op. cit., pp. 4, 11.

⁸⁵ A Metcalfe, [Opening statement to the Legal and Constitutional Affairs Committee](#), Senate Legal and Constitutional Affairs Committee, Supplementary Budget Estimates, 2011-12, 17 October 2011, p. 3.

(Source: DIAC, [The 2010-11 Humanitarian Program, Outcomes for 2010-11](#), June 2011, p. 1)

At the Supplementary Budget Estimates hearings of October 2011 Mr. Metcalfe stated that the recent increase in asylum seekers arriving by boat in 2010 had placed significant pressure on the offshore Humanitarian Program.⁸⁶ His comments reiterated the relationship between the offshore and onshore components of the Humanitarian Program.

...[t]he offshore Humanitarian Program is under pressure, in part, due to the number of onshore protection visas being granted [...] each visa granted to a person in Australia means one less available for offshore applicants. ...As a result, the recent increase of asylum seekers arriving in Australia has reduced the available offshore Special Humanitarian Program places by 1500 over the past three program years and the trend is likely to continue. Arrivals under the Special Humanitarian Program are usually family members of people who arrived under the Humanitarian Program. Between 25 000 and 35 000 people apply for Special Humanitarian Program visas per year and approximately 90 per cent of these applications are required to be refused because places are simply unavailable.⁸⁷

DIAC officials recently confirmed that the linking of the onshore and offshore components of the humanitarian intake continues to be a matter of government policy and serves as a tool to manage the overall humanitarian intake.⁸⁸

A number of commentators have advocated the delinking of the offshore component of the Humanitarian Program from the onshore component of the Program, highlighting (among other points) that Australia is the only country in the world to tie its onshore and offshore humanitarian intakes in this way.⁸⁹

2. KEY DEVELOPMENTS IN ASYLUM SEEKER POLICY SINCE 2008

The Rudd Labor Government entered office in November 2007 with a new policy agenda in relation to refugees and asylum seekers, resulting in the introduction of the following key measures in 2008:⁹⁰

⁸⁶ Ibid, p. 2.

⁸⁷ Ibid., p. 2-3.

⁸⁸ Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit., p. 63-4.

⁸⁹ RCOA, [Australia's Refugee and Humanitarian Program 2012-13: Community views on current and future directions](#), op. cit., pp. 7, 37-39. For further arguments advanced by advocates see: E Karlsen, J Phillips, and E Koleth, [Seeking asylum: Australia's humanitarian program](#), op. cit., p. 11; J Menadue, A Keski-Nummi, K Gauthier, [A new approach: breaking the stalemate on refugees and asylum seekers](#), Centre for Policy Development, 2011, pp. 6, 29. See also for a recent report, K Needham, 'Special visas dry up as boat arrivals given priority', *The Queanbeyan Age*, 2 February 2012.

⁹⁰ C Evans, [Refugee policy under the Rudd government – the first year: Address to the Refugee Council of Australia](#), 17 November 2008, cited in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), Background Note, Commonwealth Parliamentary Library, October 2010, p. 1.

- Ending the Howard Government's 'Pacific Solution', the policy of intercepting boats carrying asylum seekers before they reached Australia's migration zone, and where possible returning them to Indonesia, or processing asylum seekers who arrived by boat at an 'excised offshore place' at the offshore processing centres (OPCs) in Nauru or Manus Island in Papua New Guinea. The 'Pacific Solution' ended on 8 February 2008, when the last asylum seekers detained on Nauru were resettled in Australia, and the Rudd Government announced the closure of both OPCs.⁹¹
- Abolishing temporary protection visas (TPVs) and granting permanent residency to asylum seekers who arrived by boat and were found to be refugees. This meant that refugees were granted permanent protection irrespective of their mode of arrival. It ensured that refugees who arrived by boat had access to the same entitlements regarding travel, access to refugee resettlement services, employment and income assistance, and ability to reunite with family members, as holders of Permanent Protection visas who did not arrive by boat.⁹²
- The introduction of 'New Directions in Detention' policy: Asylum seekers who arrived without documentation were to be given publicly funded advice and assistance, access to independent review of unfavourable decisions, and external scrutiny by the Commonwealth Ombudsman.⁹³

However, the Rudd Labor Government retained two key elements of the former Howard Government's asylum seeker policies.

- The excision of Australian territory from Australia's migration zone under the *Migration Amendment (Excision from Migration Zone) Act 2001*, so as to prevent asylum seekers who arrive by boat at an 'excised offshore place' (offshore entry persons) from being able to make a valid visa application under Australian law.⁹⁴

⁹¹ E Karlsen, J Phillips, E Koleh, [Seeking asylum: Australia's humanitarian program](#), op. cit., pp. 17-18. C Bowen (Minister for Immigration and Citizenship), [Last refugees leave Nauru](#), media release, 8 February 2008

⁹² C Bowen (Minister for Immigration and Citizenship), [Budget 2008-09: Rudd Government scraps Temporary Protection visas](#), media release, 13 May 2008.

⁹³ C Evans, *New Directions in Detention, Restoring Integrity to Australia's Immigration System*, Speech given at the Australian National University, 29 July 2008, cited in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., p. 2. See also, K Simon, [Asylum Seekers](#), op. cit.

⁹⁴ Offshore entry persons are not eligible to make a visa application under section 46A of the Migration Act, E Karlsen, J Phillips, E Koleh, [Seeking asylum: Australia's humanitarian program](#), op. cit., p. 18.

- The mandatory detention of all 'offshore entry persons', or asylum seekers who arrived by boat at an 'excised offshore place', and their detention and processing on Christmas Island.⁹⁵

2.1 Select Chronology of Key Policy Developments 2009-2011

Key policy developments between 2009 and 2011 in relation to asylum seekers who arrive by boat are identified below.

1 July 2009 Abolition of the '45 day rule'

The rule previously required asylum seekers to have been in Australia for less than 45 days prior to making their visa application in order to obtain the right to work while they were awaiting the outcome of their asylum application. According to DIAC, the new arrangements:

are intended to provide asylum seekers who are lawfully in the community and cooperating with the department to resolve their status with permission to work to support themselves and their families while they await the outcome of their application to remain in Australia.⁹⁶

9 April 2010 Suspension of processing of asylum claims

The Rudd Government [announces](#) the immediate suspension of processing of new asylum applications from Sri Lankan and Afghani asylum seekers, with the suspensions to be reviewed at the end of three months and six months respectively. The suspensions are made, 'as a result of evolving circumstances in these two countries'. The Government indicates that, while asylum seekers already on Christmas Island will not be affected, future asylum seekers who arrive by boat who are subject to the suspension will continue to face mandatory detention. The Government states: 'The combined effect of this suspension and the changing circumstances in these two countries will mean that it is likely that, in the future, more asylum claims from Sri Lanka and Afghanistan will be refused.'

This announcement occurs in the context of increasing numbers of asylum seekers arriving in Australia by boat, with over 1,800 asylum seekers having arrived since the start of 2010 - the majority being Sri Lankan and Afghani.⁹⁷

⁹⁵ C Evans (Minister for Immigration and Citizenship), [Last refugees leave Nauru](#), op. cit.

⁹⁶ DIAC, [Annual Report 2008-09](#), 2009, p. 92. The abolition of the rule was effected by the entry into force of the [Migration Amendment Regulations 2009 \(No.6\)](#) SLI 2009 No. 143, cited in E Karlsen, *Developments in Australian refugee law and policy 2007-2010*, op. cit., p. 12. A research report published in 2005 found that the '45 day rule' was one of the key reasons for the insecurity and deprivation facing asylum seekers in the community, University of Queensland Boilerhouse Community Engagement Centre, [Defending human rights: community-based asylum seekers in Queensland](#), 2005, p. 61.

⁹⁷ C Evans (Minister for Immigration and Citizenship), S Smith (Minister for Foreign Affairs), B O'Connor (Minister for Home Affairs), [Changes to Australia's immigration](#)

The announcement meets with criticism from a number of quarters, raising concerns about issues including, the uncertainty facing asylum seekers affected by the suspension, and the prospects of prolonged and arbitrary detention.⁹⁸ The end to the suspension of Sri Lankan asylum claims is [announced](#) on 6 July 2010, and the end to the suspension of Afghan asylum claims is [announced](#) on 30 September 2010.⁹⁹

6 July 2010 Regional Processing Centre

In her first major policy [speech](#) after being sworn in as Prime Minister on 24 June 2010 Julia Gillard announces that the Gillard Government will seek to establish a regional processing centre to receive irregular migrants in the region and process their asylum claims. The Prime Minister indicated the Government had been in discussion with the President of East Timor, New Zealand and the UN High Commissioner for Refugees about establishing a regional processing centre.¹⁰⁰ On 8 October 2010, the Minister for Immigration [announces](#) meetings with the governments of Indonesia, East Timor and Malaysia, as well as with other key stakeholders such as the UNHCR and International Organisation for Migration (IOM), about the establishment of a Regional Protection Framework.¹⁰¹

[processing system](#), media release, 9 April 2010; UNHCR, [UNHCR disappointed at Australian decision to reopen detention centre for asylum-seekers](#), UNHCR website, 20 April 2010.

⁹⁸ UNHCR, [Safeguards needed as Australia's suspension of asylum claims by Sri Lankans and Afghans comes into force](#), media release, 16 April 2010; AHRC, [Suspension of processing asylum seekers raises serious concerns](#), media release, 9 April 2010; J McAdam & K Murphy, 'Refugee processing freeze breaches international law', *The Australian*, 14 April 2010; D Mortimer, C Horan & K Foley, 'Joint opinion: In the matter of Changes to Australia's Immigration Processing System – Suspension of Processing of Asylum Applications from Sri Lanka and Afghanistan' 19 May 2010, cited in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., pp. 20-21.

⁹⁹ J Gillard (Prime Minister), '[Moving Australia forward](#)', Speech given at the Lowy Institute on 6 July 2010; C Bowen (Minister for Immigration and Citizenship), [Suspension of processing of Afghan asylum seeker claims to be lifted](#), media release, 30 September 2010.

¹⁰⁰ J Gillard (Prime Minister), '[Moving Australia forward](#)', op. cit.; See also, L Marshall, '[Winners and losers in Sri Lanka's long war](#)', *Inside Story*, 13 November 2010; S Keim, R de Silva Wijeyeratne, '[Sri Lanka: anatomy of a tragedy](#)', *Inside Story*, 22 April 2010

¹⁰¹ C Bowen (Minister for Immigration and Citizenship), [Minister Bowen to engage with regional partners on border protection and people smuggling](#), media release, 8 October 2010.

18 Oct 2010 Moving children and vulnerable people into community detention

The Gillard Government [announces](#) that under residence determination provisions in the *Migration Act*, 'several hundred' unaccompanied children and vulnerable family groups will begin to be moved out of immigration detention facilities and into community-based detention by June 2011. It is emphasised that this change will not impact on the mandatory detention policy as '[a]ll unauthorised arrivals will continue to be mandatorily detained when they first arrive in Australia for the management of health, identity and security risks to the community'.¹⁰²

On 1 March 2011 The Minister for Immigration [announces](#) that since the Government's announcement of 18 October 2010 the community detention network has been expanded and 268 people moved into community based accommodation.¹⁰³ The focus of the policy is said to be on 'the youngest unaccompanied minors and families with young children, single parent families, families with pregnant women and other particularly vulnerable families', with priority to be extended to older unaccompanied minors and other family groups. The Minister indicates that the implementation of this change has involved organisations such as the Australian Red Cross and Life Without Barriers, as well as numerous non-profit and welfare agencies in providing appropriate housing, health and support services.

On 29 June 2011 the Minister [announces](#) that up to 62% of children in detention have been moved to community detention arrangements. The Minister confirms that there are 1203 people in community detention, including 615 adults and 588 children.¹⁰⁴

11 Nov 2010 High Court judgment: refugee status assessment process

The High Court delivers its judgment in the case of [Plaintiff M61/2010E v Commonwealth of Australia; Plaintiff M69 of 2010 v Commonwealth of Australia \[2010\] HCA 41](#). The Court finds that those who conduct Refugee Status Assessments (RSA) and Independent Merits Reviews (IMR) under the non-statutory refugee status assessment process applying to IMAs are bound by the *Migration Act* and decisions of the Australian courts.

¹⁰² J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), [Government to move children and vulnerable families into community-based accommodation](#), media release, 18 October 2011.

¹⁰³ C Bowen (Minister for Immigration and Citizenship), [Moving asylum seekers children into the community](#), media release, 1 March 2011.

¹⁰⁴ C Bowen (Minister for Immigration and Citizenship), [Government meets commitment on community detention](#), media release, 29 June 2011.

- This case represents the first challenge to the offshore processing regime by an offshore entry person in an Australian court, brought in the original jurisdiction of the High Court, under s75 of the Commonwealth Constitution.
- Both plaintiffs, who had been unsuccessful in their claims for protection, argued there was a lack of procedural fairness and error of law in their RSA and IMR processes. One plaintiff also challenged the validity of section 46A of the *Migration Act*, which precludes an offshore entry person from lodging a valid visa application unless the Minister 'lifts the bar'.
- The full bench of the High Court unanimously rejected the challenge to the validity of section 46A. The Court held the Minister could not be compelled to exercise his discretion, and that the fact that the Minister could not be compelled to exercise his discretion to 'lift the bar' under section 46A did not make the provision invalid.
- However, the Court found that because the Minister decided to consider exercising power under sections 46A and 195A of the *Migration Act* in every case where an offshore entry person claims to be a person to whom Australia owes protection obligations, the RSA and IMR processes are 'steps taken under and for the purposes of the Migration Act'. As these inquiries directly impacted on the plaintiffs' rights and interests to freedom from detention, those making the inquiries were bound to act according to law, affording procedural fairness to the plaintiffs.
- The High Court held that those who conduct an RSA or an IMR are bound by the *Migration Act* and the decisions of Australian courts. It was an error of law to treat the *Migration Act* and decided cases as no more than guides to decision making.

While the ruling did not invalidate the Minister's discretion, or lead to a finding that excision of territories was unconstitutional, the case did have ramifications for the conduct of assessments under the RSA and IMR processes.¹⁰⁵

7 Jan 2011 Introduction of the Protection Obligation Determination

The Gillard Government [announces](#) changes to the refugee status determination process for asylum seekers arriving by boat in response to the High Court decision of 11 November 2010. The new measures were intended to make the assessment process more rigorous, while at the same time ensuring timely processing of cases in the face of concerns about an anticipated increase in applications for judicial review prolonging the claims process and time in detention.¹⁰⁶

¹⁰⁵ E Karlsen, '[High Court ruling on the offshore processing of asylum claims](#)', *FlagPost*, Commonwealth Parliamentary Library, 22 November 2010.

¹⁰⁶ C Bowen (Minister for Immigration and Citizenship), '[Government announces faster, fairer refugee assessment process](#)', media release, 7 January 2011.

From 1 March 2011, the primary assessment process is to be streamlined into a process called [Protection Obligations Determination](#) (POD), which will allow an earlier decision on whether an asylum seeker is in need of protection. As the Minister explained:

Under the new streamlined system, irregular maritime arrivals whom a departmental officer concludes clearly meets the criteria for protection under the Refugees Convention will be considered for the grant of a protection visa.

Where the departmental officer is not able to promptly reach that conclusion, the case will be fast-tracked directly to an independent assessor for final determination, to be known as an Independent Protection Assessment.

The new Protection Obligations Determination process will apply to asylum seekers who arrive by boat at an excised offshore place from 1 March, as well as those who arrived previously and who have not had a Refugee Status Assessment interview by that date.

The Minister also indicates that there will be adjustments made to ensure procedural fairness in these processes, and the former Commonwealth Ombudsman, Professor John McMillan, is to [advise](#) the Government on possible options for improving efficiency and minimising the duration of the judicial review process for IMAs.

7 May 2010 Bilateral transfer agreement between Australia and Malaysia

On 7 May 2010 the Australian and Malaysian governments [commit](#) to entering into a bilateral arrangement concerning the transfer of asylum seekers and refugees between the two countries. The aim of the agreement is to 'help tackle people smuggling and irregular migration in the Asia-Pacific region' as part of the Regional Cooperation Framework agreed to at the Bali Process Ministerial Conference on 30 March 2011.¹⁰⁷ The announcement follows months of negotiations between the two governments, the International Organisation for Migration and UNHCR. Under the agreement 800 irregular maritime arrivals will be transferred to Malaysia for refugee status determination. In return, over a four year period, Australia will resettle 4000 refugees who are living in Malaysia.

The Minister for Immigration also [announces](#) that as part of the Regional Framework, the Government is engaged in ongoing talks with Papua New Guinea about the establishment of an assessment centre.¹⁰⁸ The Government signs a MoU with the Government of Papua New Guinea on 19 August 2011 for

¹⁰⁷ J Gillard (Prime Minister), [Joint statement with the Prime Minister of Malaysia](#), media release, 7 May 2011.

¹⁰⁸ C Bowen (Minister for Immigration and Citizenship), [The regional cooperation framework](#), media release, 7 May 2011.

the establishment of an assessment centre on Manus Island to complement the Malaysia transfer arrangement.

16 June 2011 Parliamentary Inquiry into Australia's Immigration Detention Network

The Federal Parliament establishes the [Joint Select Committee on Australia's Detention Network](#) to:

conduct a comprehensive inquiry into Australia's Immigration Detention Network, including its management, resourcing, potential expansion, possible alternative solutions, the Government's detention values, and the effect of detention on detainees.

The committee will also inquire into the reasons for and nature of riots and disturbances, their management, and the length of time detainees have been held in the detention network, the reasons for their stay, the processes for assessment of protection claims and any other matters relevant to the [terms of reference](#).¹⁰⁹

The Committee is due to report in March 2012.

25 July 2011 Australia-Malaysia Transfer and Resettlement Arrangement signed

The '[Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement](#)' is signed, and [operational details](#) of the arrangement made public. A ministerial declaration is made regarding Malaysia under section 198A of the Migration Act, to enable the transfer of asylum seekers to Malaysia.¹¹⁰

Between the announcement of the bilateral agreement on 7 May and the signing of this agreement, Australia receives over [500](#) unauthorised boat arrivals. Despite previously stating that people who arrived unauthorised by boat after the 7 May announcement would be transferred to a third country for processing, the Australian Government now [confirms](#) that those who arrived in Australia as irregular maritime arrivals before 25 July 2011 will not be transferred to Malaysia and will be processed in Australia. It also confirms that the UNHCR and IOM are to play a role in the implementation of the arrangement.¹¹¹

¹⁰⁹ [Joint Select Committee on Australia's Immigration Network website](#), 1 February 2012.

¹¹⁰ '[Instrument of Declaration of Malaysia as a Declared Country under Subsection 198A\(3\) of the Migration Act 1958](#)', registered on 18 August 2011, ComLaw website, cited in E Karlsen, [Migration Legislation Amendment \(Offshore Processing and Other Measures\) Bill 2011](#), Bills Digest No. 53, 2011-12, Commonwealth Parliamentary Library, 22 September 2011, p. 3.

¹¹¹ H Spinks, [Australia-Malaysia asylum seeker transfer agreement](#), *FlagPost*, Commonwealth Parliamentary Library, 27 July 2011. J Gillard (Prime Minister), C Bowen (Minister for Immigration and Citizenship), [Australia and Malaysia sign transfer deal](#), media release, 25 July 2011.

The [UNHCR](#) notes the signing of the agreement and that the implementing agreement contains important safeguards. However it states: ‘UNHCR’s preference has always been an arrangement which would enable all asylum-seekers arriving by boat into Australian territory to be processed in Australia. This would be consistent with general practice.’¹¹²

The [RCOA](#) expresses concerns that the agreement undermines future regional cooperation in meeting refugee protection needs in the Asia-Pacific region. Both the RCOA and the [AHRC](#) express concerns about the fate of asylum seekers transferred to Malaysia under the agreement.¹¹³

31 Aug 2011 High Court judgement: Malaysia declaration

The Full Bench of the High Court of Australia hands down its decision in the case of [Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship, \[2011\] HCA 32](#). In the 6:1 majority decision the Court rules that the Immigration Minister’s declaration in relation to Malaysia was made without power and therefore invalid. The Court also finds that the Minister was prevented from removing the second plaintiff from Australia (a 16 year old Afghan boy) because the Minister had not met the requirements of the *Immigration (Guardianship of Children) Act* 1946. The reasoning of the Court in relation to the invalidity of the Malaysia declaration is stated in the majority judgement thus:

Where, as in the present case, it is agreed that Malaysia: first, does not recognise the status of refugee in its domestic law and does not undertake any activities related to the reception, registration, documentation and status determination of asylum seekers and refugees; second, is not party to the Refugees Convention or the Refugees Protocol; and, third, has made no legally binding arrangement with Australia obliging it to accord the protections required by those instruments; it was not open to the Minister to conclude that Malaysia provides the access or protections referred to in s 198A(3)(a)(i) to (iii). The Minister’s conclusions that persons seeking asylum have access to UNHCR procedures for assessing their need for protection and that neither persons seeking asylum nor persons who are given refugee status are ill-treated pending determination of their refugee status or repatriation or resettlement did not form a sufficient basis for making the declaration...¹¹⁴

The Federal Government [expresses](#) disappointment at the High Court’s

¹¹² UNHCR, [UNHCR statement on the Australia-Malaysia Arrangement](#), media release, 25 July 2011.

¹¹³ RCOA, [Australia-Malaysia deal undermines regional push for refugee protection](#), media release, 26 July 2011; AHRC, [Sending asylum seekers to Malaysia is not the answer to addressing people smuggling](#), media release, 25 July 2011.

¹¹⁴ [Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship](#), [2011] HCA 32 (31 August 2011), per Gummow, Hayne, Crennan and Bell JJ at [135], cited in E Karlsen, [Migration Legislation Amendment \(Offshore Processing and Other Measures\) Bill 2011](#), op. cit, pp. 6-7.

decision, stating:

...[Y]esterday the refugee and asylum seeker law of this country changed...the High Court's decision basically turns on its head the understanding of the law in this country prior to yesterday's decision.¹¹⁵

On 4 September the Gillard Government [releases](#) the Commonwealth Solicitor-General's advice on the implications of the High Court decision in Plaintiff M70/2011.¹¹⁶ The advice concludes in relation to the transfer of asylum seekers who arrive as irregular maritime arrivals to third countries for processing:

In the light of Plaintiff M70 we do not have reasonable confidence on the material with which we have been briefed that the power conferred by s198A could currently be exercised to take asylum seekers from Australia to either Nauru or to PNG for determination of their refugee status.¹¹⁷

21 Sep 2011 Offshore Processing Bill

The Gillard Government [announces](#) the introduction of legislation to 'restore the understanding of the third country transfer provisions of the Migration Act that existed prior to the High Court's decision on 31 August 2011.' The Government explains that:

...the amendments will ensure the executive is able to fulfil its role of managing an orderly migration program by putting beyond doubt the meaning of the relevant legislative provisions. The government's amendments will make absolutely clear Parliament's intention to provide the government of the day with the ability to control Australia's borders by transferring asylum seekers arriving at excised offshore places to third countries.¹¹⁸

The [Migration Legislation Amendment \(Offshore Processing and Other Measures\) Bill 2011](#) is introduced into the Australian Parliament on 21 September 2011.¹¹⁹ The Bill met with criticism for removing existing protections

¹¹⁵ J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), [Transcript of joint press conference, Brisbane, 1 September 2011](#), media release, 1 September 2011.

¹¹⁶ See: Advice on [offshore processing](#), Advice on [implications for minors](#).

¹¹⁷ S Gageler, S Lloyd and G Kennett, [In the matter of the implications of Plaintiff M70/2011 v Minister for Immigration and Citizenship for offshore processing of asylum seekers under the Migration Act 1958 \(Cth\)](#), opinion SG no. 21 of 2011, 2 September 2011, cited in E Karlsen, [Migration Legislation Amendment \(Offshore Processing and Other Measures\) Bill 2011](#), op. cit., p. 9.

¹¹⁸ J Gillard (Prime Minister), C Bowen (Minister for Immigration and Citizenship), [Legislation to restore Migration Act powers](#), media release, 12 September 2011.

¹¹⁹ See E Karlsen, [Migration Legislation Amendment \(Offshore Processing and Other Measures\) Bill 2011](#), op. cit.

in the Migration Act, which placed conditions on the countries to which asylum seekers could be removed.¹²⁰

The Federal Opposition moved [amendments](#) requiring that the offshore processing country be a signatory to the Refugee Convention. However, the proposed amendment was rejected by the Gillard Government. The Bill was not put to a vote in the Lower House when it became clear that it did not have sufficient support in the Parliament.¹²¹

13 Oct 2011 Onshore processing of IMAs

The Gillard Government [announces](#) that as a result of the High Court decision and the subsequent legislative impasse, the Government will commence onshore processing of asylum seekers who are irregular maritime arrivals. The announcement indicates:

- The Government's continued policy support for the implementation of the transfer agreement with Malaysia, along with an associated processing centre in Papua New Guinea.
- The Government's intention to honour the commitment to resettle 4000 refugees from Malaysia, within the current humanitarian intake quota
- The Government's continued policy support for mandatory detention
- That the Government will continue to press the federal Opposition to pass the amendments to the Migration Act, as contained in the Federal Government's Offshore Processing Bill. The proposed legislation will remain on the notice paper and before Parliament, should the Opposition decide to support it in future.
- Mandatory detention will be maintained for health, identity and security checks.
- At the time of the announcement, the immigration detention network had the capacity to accommodate a further 1100 people in detention centres and 1300 in alternative places of detention, in the short term. At the time of the announcement there were 3555 people in immigration detention facilities who arrived in Australia by boat, and 1145 irregular maritime arrivals being accommodated in the community
- The Government will respond to an anticipated increase in the number of asylum seekers arriving by boat, and resulting pressures on the immigration detention network, by making greater use of community

¹²⁰ G Williams, '[Offshore processing bill is Tampa law mark II: unjust and bad](#)', *Sydney Morning Herald*, 11 October 2011; Refugee Council of Australia, '[Refugee protections ignored in offshore revival](#)', media release, 12 September 2011; AHRC, '[Government should not revive Malaysian agreement](#)', media release, 12 September 2011.

¹²¹ M Johnston, P Hudson, '[Julia Gillard abandons offshore processing following death of Malaysia deal](#)', *Herald Sun*, 13 October 2011; ABC News, '[PM makes final appeal for Crook's asylum vote](#)', 12 October 2011; J Thompson and A Dziedzic, '[Crook to vote against asylum bill](#)', *ABC News*, 13 October 2011; ABC News, '[Government reverts to interim onshore processing](#)', 13 October 2011.

detention arrangements and bridging visas for asylum seekers (as currently regularly used for asylum seekers arriving by air).¹²²

25 Nov 2011 Bridging visa for IMAs; consistent processing of boat and air arrivals

The Minister for Immigration [announces](#):

- The first bridging visas have been granted to a group of 27 asylum seekers. The detention population is being assessed for community placement. Initial priority will be given to those who have spent the greatest time in detention, with 100 irregular maritime arrivals to be released into the community a month. The existing community detention program will be used for those who are vulnerable and not suitable for the bridging visa program.
- From 2012 the Government is moving to a single protection visa process for both boat and air arrivals, using the current onshore arrangements for application and independent review through the Refugee Review Tribunal.

However, the Minister also confirms the continued use of mandatory detention for health, identity and security checks, and stated that, should support for legislative changes to enable offshore processing be secured, 'a parallel, non-statutory review process for IMAs will resume'.¹²³

The Government's decision to release asylum seekers into the community on bridging visas is welcomed by bodies including, the [UNHCR](#), [RCOA](#), AHRC and the Migration Institute of Australia.¹²⁴

For a more detailed chronology of developments concerning asylum seekers see **Appendix Six** (please note that Appendix Six only appears in the electronic version of this paper).

¹²² J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), [Joint Press Conference Canberra with Julia Gillard – Prime Minister of Australia and Chris Bowen MP – Minister for Immigration and Citizenship](#), media release, 13 October 2011.

¹²³ C Bowen (Minister for Immigration and Citizenship), [Bridging visas to be issued for boat arrivals](#), op. cit. The Government also released the [findings](#) of an independent review into the efficiency of judicial review of irregular maritime arrival cases. The [Government](#) broadly accepted the recommendations of the review.

¹²⁴ UNHCR, [UNHCR welcomes positive reforms to Australia's asylum and detention systems](#), media release, 25 November 2011; RCOA, [Refugee and asylum seeker policy on a positive pathway](#), media release, 25 November 2011; Sydney Morning Herald, ['Asylum seekers to join community'](#), 25 November 2011; K Needham, ['Asylum seekers to be released into community: minister'](#), *Sydney Morning Herald*, 25 November 2011.

3. CURRENT FEDERAL GOVERNMENT POLICY ON ASYLUM SEEKERS WHO ARRIVE BY BOAT

Key policy decisions made by the Gillard Government in the latter half of 2011 effected a notable shift in the treatment of asylum seekers who arrive by boat. This followed a decade dominated by the Howard Government's 'Pacific Solution' and the continued processing of asylum seekers arriving by boat on Christmas Island under the Rudd and Gillard Labor Governments. The key policy changes made in this period were to:

- revert to onshore processing
- undertake greater community placement of asylum seekers under bridging visas or in community detention, and
- process asylum seekers arriving by boat and asylum seekers arriving by air under the same protection visa processing system.¹²⁵

The shift to onshore processing was driven by the High Court decision of August 2011, which called into question the ability to undertake offshore processing of asylum seekers, whether in Nauru, Papua New Guinea or Malaysia, as well as the subsequent failure to garner sufficient support for legislative changes aimed at enabling offshore processing. In explaining the move towards a single processing system for asylum seekers arriving by both boat and air, the Immigration Minister, Chris Bowen, stated:

With the legislative impasse and the resulting move toward greater community placement, there is no longer any benefit to parallel processing arrangements for offshore entry persons... It is only prudent to introduce a single, consistent and efficient process that will continue to afford all people using the system access to judicial review.¹²⁶

Following the Gillard Government's announcement on 13 October 2011 of the reversion to onshore processing, at the Senate Estimates hearing of October 2011, the Secretary of the Department of Immigration and Citizenship Mr Andrew Metcalfe, indicated that, although the number of people arriving by boat had dropped to an average figure of 300 a month, in the absence of the Malaysia Agreement it was possible this could return to the rates of 2010, when an average of 600 people were arriving by boat per month:

In the absence of the Malaysia arrangement and a change in the psychology of

¹²⁵ J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), [*Joint Press Conference Canberra with Julia Gillard – Prime Minister of Australia and Chris Bowen MP – Minister for Immigration and Citizenship*](#), op. cit.; C Bowen (Minister for Immigration and Citizenship), [*Bridging visas to be issued for boat arrivals*](#), op. cit.

¹²⁶ C Bowen (Minister for Immigration and Citizenship), [*Bridging visas to be issued for boat arrivals*](#), op. cit. A number of organisations and commentators have campaigned for an end to offshore processing and an end to the differential treatment of asylum seekers arriving by boat and those arriving by air. See, for example: J Phillips and H Spinks, [*Immigration Detention in Australia*](#), op. cit., pp. 27-28.

people smugglers and their passengers that getting to Australia is going to result in accessing Australian processes I suspect we are returning to a situation more like we had last year.¹²⁷

By February 2012 it was reported that DIAC estimates asylum seekers will arrive by boat at a rate of 450 a month in 2012-13.¹²⁸

The Federal Government responded to the anticipated increase in the number of asylum seekers arriving by boat by committing to a greater use of community placement and bridging visas to ease pressure on the immigration detention network.¹²⁹ The immigration detention network has been under sustained pressure over the course of the last two years as attempts have been made to expand the network to accommodate the increased number of asylum seekers arriving by boat, amidst reports of suicides and self-harm by detainees, as well as protests at a number of detention centres.¹³⁰

As with the decisions to move to onshore processing and a single protection visa processing system, the use of community detention and bridging visas have for some time been advocated as alternatives to secure immigration detention. Proponents point to the substantial body of evidence suggesting the deleterious impact of secure immigration detention for lengthy periods on the mental health, well-being and human rights of detainees.¹³¹ Starting with the

¹²⁷ Senate Legal and Constitutional Affairs Legislation Committee, [Supplementary Estimates Hearing, Immigration and Citizenship Portfolio](#), Official Committee Hansard, 17 October 2011, pp. 95, 52. Reports in January 2012 of Indonesia's decision to ease visa restrictions on visitors to Indonesia from Sri Lanka and Bangladesh, with plans to do the same for Afghans and Pakistanis, reportedly gave rise to concerns about an influx of asylum seekers from these countries coming to Australia via Indonesia. However, these concerns were reportedly allayed by the Indonesian government: T Allard, ['Indonesia eases fear of smuggling free for all'](#), *Sydney Morning Herald*, 10 January 2012; P Alford, ['Joint Australia-Indonesia plan to disrupt people smuggling'](#), *The Australian*, 10 January 2012.

¹²⁸ K Needham, ['A third of asylum seekers to live outside detention'](#), *Sydney Morning Herald*, 14 February, 2012. On 22 February it was reported that close to 1000 asylum seekers had arrived in Australia by boat to date in 2012, L Vasek, ['Boat lifts asylum tally towards 1000 for the year'](#), *The Australian*, 22 February 2012.

¹²⁹ J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), [Joint Press Conference Canberra with Julia Gillard – Prime Minister of Australia and Chris Bowen MP – Minister for Immigration and Citizenship](#), op. cit.

¹³⁰ J Phillips and H Spinks, [Immigration Detention in Australia](#), op. cit., pp. 13-33. See for a recent report of attempted suicide at the Northern Immigration Detention Centre: ABC News, ['Detained asylum seeker attempts suicide'](#), 23 February 2012.

¹³¹ T McDonald, ['Calls for community-based detention for asylum seekers'](#), *PM*, 19 September 2011; G Thompson, ['Asylum seekers may live in the community'](#), *PM*, 14 October 2011. For information on mental health in detention, including a figure indicating serious incidents among the immigration detention population between 2001-02 and 2010-11 see: Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship Supplementary Submission](#), September 2011, pp. 62-63. For a recent report on detention centres see:

introduction of alternative accommodation arrangements by the Howard Government in 2002, both the Coalition and Labor governments have over the course of the last decade introduced various measures to establish alternatives to secure immigration detention in immigration detention centres, particularly for vulnerable groups such as families and children.¹³²

In December 2011 it was reported that, following sustained lobbying by the mental health profession warning of a 'mental health crisis' in the immigration detention network, DIAC had agreed to increase the number of psychiatrists available to treat asylum seekers in detention.¹³³ This increase in resources reportedly responded to concerns raised by the company contracted to provide mental health services in detention centres (International Health and Medical Services), claiming there was a lack of staff with adequate qualifications to deal with the increase in serious cases of mental illness linked with lengthy periods spent by asylum seekers in detention. At 30 November 2011, 38.1 % (2182) of the 5733 people in immigration detention had been detained for longer than 12 months.¹³⁴ Professor Newman of the Federal Government's Detention Health Advisory Group (DHAG) reportedly urged the Federal Government to hasten the release of asylum seekers into the community, stating that the deterioration of the mental health of asylum seekers was directly linked with their being detained and could not merely be addressed through increased access to psychiatric assistance.¹³⁵

At the supplementary budget estimates hearing of October 2011, the Secretary of DIAC indicated that even in complex instances where asylum seekers had failed in their claim for protection but resisted removal from Australia, there was

an acceptance that we cannot keep people detained forever and that ultimately management of them in the community is a better arrangement for a whole range of reasons...it is simply not sustainable, as governments have found over many years, to detain people for extremely long periods of time'.¹³⁶

L Mosley, '[Amnesty report slams remote detention centres](#)', *ABC News*, 23 February 2012; K O'Brien, '[Amnesty reports centre horror stories](#)', *ABC News*, 17 February 2012. See also,

¹³² J Phillips and H Spinks, [Immigration Detention in Australia](#), op. cit., p. 31.

¹³³ K Needham, 'Psychiatrist numbers boosted to help treat asylum seeker mental health crisis', *Sydney Morning Herald*, 12 December 2011, p. 4.

¹³⁴ DIAC, [Immigration Detention Statistics Summary](#), 30 November 2011, p. 8.

¹³⁵ K Needham, 'Psychiatrist numbers boosted to help treat asylum seeker mental health crisis', op.cit.

¹³⁶ Senate Legal and Constitutional Affairs Legislation Committee, [Supplementary Estimates Hearing, Immigration and Citizenship Portfolio](#), Official Committee Hansard, op. cit., p. 108. Mr Metcalfe also pointed out that the High Court has ruled that under the indefinite arbitrary detention of people within the immigration detention system is unconstitutional (p. 114).

Moreover, he also stated that lengthy periods of mandatory detention had demonstrably failed to act as a deterrent to discourage asylum seekers from seeking to travel to Australia by boat.¹³⁷

The Government's current policy on asylum seekers who arrive by boat (or IMAs), states that IMAs will continue to be subject to mandatory detention for the purpose of conducting health, identity and security checks. However, following the completion of those initial checks, 'eligible boat arrivals who do not pose a risk to the Australian community will be progressively considered for release into the community on bridging visas while their asylum claims are assessed'.¹³⁸ Previously, bridging visas were routinely used for asylum seekers who had arrived by air, but were not available to IMAs. The Government also announced it would continue using the expanded community detention program for vulnerable IMAs.

The following section briefly outlines the details of the current policy with regard to the use of bridging visas and community detention for treating IMAs.

3.1 Bridging visas

Under the current policy, IMAs may be granted a bridging visa E, allowing them to remain lawfully in Australia while their claim for asylum is processed and their immigration status resolved.¹³⁹ DIAC has indicated that decisions as to the granting of bridging visas will be made on a case-by-case basis, with priority being given to people who have been in detention for lengthy periods. The Department anticipates that at least 100 people would be granted a bridging visa per month. At the same time, people who are deemed as posing an unacceptable risk to the community will remain in an immigration detention facility.¹⁴⁰

People on bridging visas once released into the community are able to choose where they wish to live. However, they are required to report to DIAC on a regular basis, and to inform DIAC of their address and any changes to their address. It is expected that the majority of asylum seekers will choose to live in proximity to existing family or community networks, or places of employment. For example, when questioned about the placement of asylum seekers in

¹³⁷ Ibid., p. 112.

¹³⁸ DIAC, [*Fact Sheet 65 – Onshore Processing Arrangements for Irregular Maritime Arrivals*](#), November 2011.

¹³⁹ Bridging visas are described by DIAC as 'non-substantive visas used to make non-citizens lawful, which in effect means they avoid being subject to mandatory detention'. For a description of different bridging visa categories see: Joint Select Committee on Australia's Immigration Detention Network, [*Submission 32 – Department of Immigration and Citizenship*](#), op. cit., 'An historical perspective of refugees and asylum seekers in Australia 1976-1922', pp. 4-5.

¹⁴⁰ Ibid.

regional areas at the supplementary budget estimates hearings of October 2011, DIAC officials stated: '[T]here are a number of regions in Australia where particular communities have settled successfully. One thought might be that we look to those areas of success and perhaps link people from the same communities with them'.¹⁴¹ The Department makes it clear that people on bridging visas do not have access to public housing and most will have to find private rental accommodation, while some may be eligible for accommodation support for a brief period following their release from detention.

Asylum seekers on bridging visas have the right to work to enable them to support themselves while they are living in the community.¹⁴² In the course of Supplementary Estimates hearings in October 2011, a DIAC official conceded that many asylum seekers on bridging visas 'would find it a challenge to fend for themselves, because of the issues associated with language'.¹⁴³ Figures cited by a committee member at the hearing indicated that in the past up to 83.5 % of asylum seekers given protection visas remained unemployed after five years.¹⁴⁴ At the same time, a DIAC official stated that:

...if we compare humanitarian entrants who have come directly from overseas as part of our refugee program with asylum seekers who have been granted protection visas onshore, the employment outcomes are actually better for people who have come through IMAs.¹⁴⁵

Such comments suggest that asylum seekers residing in the community on bridging visas may require support services. However, as asylum seekers do not hold permanent visas they do not have access to settlement services that are available to assist other migrants.

Where asylum seekers are unable to support themselves and are assessed as requiring support to avoid destitution, whether on a transitional or ongoing basis, they may be eligible for assistance through two programs which are funded by DIAC and administered by the Australian Red Cross, namely, the Community Assistance Support Program (CAS) and the Asylum Seeker

¹⁴¹ Senate Legal and Constitutional Affairs Legislation Committee, [Supplementary Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit., p. 110.

¹⁴² DIAC, [Fact Sheet 65 – Onshore Processing Arrangements for Irregular Maritime Arrivals](#), op. cit. By way of example, the Asylum Seekers Centre of NSW, based in Surry Hills in Sydney, runs an employment assistance program for asylum seekers living in the community on bridging visas, R Simpson, 'Sharing food cultures a beacon of hope for anxious new residents', *Sydney Morning Herald*, 10 December 2011, p. 5.

¹⁴³ Senate Legal and Constitutional Affairs Legislation Committee, [Supplementary Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit., p. 104.

¹⁴⁴ Ibid., p. 113. One DIAC official responded by indicating that a large number of those unemployed as per that statistic were engaged in some form of vocational training or education at the time (p. 114).

¹⁴⁵ Ibid., p. 114.

Assistance Scheme (ASAS).¹⁴⁶ Assistance may include: limited financial assistance to meet basic living expenses and avoid destitution (at 89 % of the equivalent special benefit Centrelink rate); rental assistance (at 89 % of the equivalent Centrelink rate); essential healthcare and medical expenses that are equivalent to Medicare assistance; torture and trauma counselling; and case work assistance for vulnerable asylum seekers. DIAC indicates that asylum seekers will also have access to interpreters through the Translating and Interpreting Service (TIS).

When questioned about the comparative costs to the Federal Government of secure held detention in immigration detention centres as against releasing asylum seekers into the community on bridging visas, the Secretary of the DIAC stated in October 2011:

I would expect that it would be significantly less expensive to have people on bridging visas than in held detention because the security guarding costs are removed. But there will, of course, be costs because some, many, depending on the cohort we have, may have difficulty accessing work as a practical matter and, therefore, would be reliant upon the social security system... Ordinarily you would expect that it would be substantially less expensive to have people on bridging visas. Another factor, of course, is that we know there are many people pursuing claims against the Commonwealth in relation to damage allegedly done to them as a result of being detained. One would hope that if people are detained for shorter periods of time that the potential for those damages claims would be significantly reduced.¹⁴⁷

At the Senate Additional Estimates hearing of 13 February 2012 DIAC indicated that it expected to save \$400 million by moving asylum seekers out of detention centres and into the community on bridging visas and into community detention.¹⁴⁸ According to DIAC, at 13 February 257 bridging visas had been issued to asylum seekers who arrived by boat, following the Government's policy change in 2011, including 107 visas granted prior to the end of 2011, and 150 visas granted in January 2012.¹⁴⁹ DIAC also indicated that by 2012-13 it

¹⁴⁶ DIAC, [Fact Sheet 65 – Onshore Processing Arrangements for Irregular Maritime Arrivals](#), op. cit. For information on recent federal policies on government assistance to asylum seekers and refugees see: L Buckmaster, [Australian government assistance to refugees: fact v fiction](#), Background note, Parliamentary Library, 1 December 2009.

¹⁴⁷ Ibid., p. 110.

¹⁴⁸ Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing Hansard](#), op. cit., p. 74. K Needham, [‘A third of asylum seekers to live outside detention’](#), op. cit.

¹⁴⁹ Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing Immigration and Citizenship Portfolio](#), op. cit., p. 76. DIAC officials also indicated that they expected another 100 bridging visas to be granted on 14 February 2012.

was expected that 30 % of asylum seekers arriving by boat would be released into the community on bridging visas.¹⁵⁰

3.2 Community Detention

The Minister for Immigration and Citizenship may exercise his ministerial power under section 197AB of the *Migration Act* (Cth) to make a 'residence determination'. Such a determination permits people who are in immigration detention to reside at a specified place in the community, instead of being detained in ordinary immigration detention arrangements.¹⁵¹ Community detention of IMAs was first introduced under the Howard Government in 2005, and continues to be one among a number of options that the Federal Government has pursued as an alternative to secure held detention in immigration detention centres.¹⁵² Other alternatives include lower security facilities, such as immigration residential housing and immigration transit accommodation.¹⁵³ The Federal Government announced in October 2011 that it would expand the community detention program to enable the relocation of children and family groups out of immigration detention centres and into community accommodation.¹⁵⁴ In implementing the expansion of the program the Federal Government is advised by the Residence Determination Reference Group and the Council for Immigration Services and Status Resolution.¹⁵⁵

While people in community detention remain for administrative purposes in immigration detention and do not have the rights and entitlements of visa holders, they are able to reside in the community without needing to be escorted. Asylum seekers in community detention are subject to a number of conditions, including being required to report regularly to DIAC or relevant

¹⁵⁰ Ibid., p. 76.

¹⁵¹ Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), op. cit., 'An historical perspective of refugees and asylum seekers in Australia 1976-1922', p. 7.

¹⁵² Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), August 2011, 'Immigration detention facilities in Australia', p. 3.

¹⁵³ DIAC, [Fact Sheet 65 – Onshore Processing Arrangements for Irregular Maritime Arrivals](#), op. cit. See also: Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), op. cit., 'Immigration detention facilities in Australia'.

¹⁵⁴ J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), [Government to move children and vulnerable families into community-based accommodation](#), op. cit.

¹⁵⁵ Senate Legal and Constitutional Affairs Legislation Committee, [Supplementary Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit., p. 104; DIAC, [Fact Sheet 83a – Community Detention](#), October 2011.

service provider, and to reside at an address designated by the Minister.¹⁵⁶

Unlike the asylum seekers who are released into the community through the granting of bridging visas, those in community detention under a residence determination do not have any lawful status in Australia and are not permitted to work or study. However, children have access to schooling, including English classes. While asylum seekers on bridging visas may be able to support themselves while in the community, as DIAC explains, the community detention program is used 'for particularly vulnerable people and for unaccompanied minors in particular, given the additional support that this program provides'.¹⁵⁷ DIAC indicated in November 2011 that:

The ongoing priority is to move all remaining women and children and their families into community detention. The department is also continuing to place a small but steady flow of single, vulnerable, adult men in community detention.¹⁵⁸

The community detention program is led by the Australian Red Cross (ARC) with service providers, including Hotham Mission Asylum Seeker Project, Mercy Community Services, The Salvation Army, Multicultural Development Association, MacKillop Family Services and Marist Youth Care, which are supported by other subcontracted non-government organisations.¹⁵⁹ The ARC has been contracted by the Department to provide care and welfare services for people in community detention since 1 November 2005.¹⁶⁰ According to DIAC, '[t]he program covers housing, residential/out-of-home care for unaccompanied minors, case workers, an allowance to meet daily living costs and a range of activities'.¹⁶¹

While DIAC has made it clear that no public housing stock is used for the community detention program, concerns have been raised by the NSW Government, as well as the Real Estate Institute of Australia as to the impact of the expanded community detention program on housing affordability (discussed

¹⁵⁶ DIAC, [Fact Sheet 83a – Community Detention](#), op. cit.

¹⁵⁷ DIAC, [Fact Sheet 65 – Onshore Processing Arrangements for Irregular Maritime Arrivals](#), op. cit.

¹⁵⁸ Joint Select Committee on Australia's Immigration Detention Network, [Question 51 – The Department of Immigration and Citizenship's answers to questions on notice](#), received 8 November 2011.

¹⁵⁹ DIAC, [Fact Sheet 83a – Community Detention](#), February 2012.

¹⁶⁰ Joint Select Committee on Australia's Immigration Detention Network, [Question 61 – The Department of Immigration and Citizenship's answers to questions on notice](#), received 17 November 2011.

¹⁶¹ DIAC, [Fact Sheet 65 – Onshore Processing Arrangements for Irregular Maritime Arrivals](#), op. cit. For information on government assistance to asylum seekers and refugees see: L Buckmaster, [Australian government assistance to refugees: fact v fiction](#), op. cit.

below).

On 21 December 2011 it was reported that since October 2010, when the Federal Government announced its decision to expand the community detention program and move the majority of children out of immigration detention centres and into community-based accommodation, the Minister for Immigration and Citizenship had approved 2559 people to move from detention centres to community detention, with around 1098 of those having been granted protection visas.¹⁶² According to DIAC, at the end of November 2011, around 26 % of IMAs in immigration detention were in community detention.¹⁶³ DIAC reported that at 30 November 2011 there were 1,324 people living in the community under a residence determination, including 790 adults and 534 children.¹⁶⁴

In February 2012 DIAC indicated that approximately 550 properties were being rented around Australia for community detention. Most of these were properties rented on the open market at market rates, while some properties were made available by faith-based organisations. The largest number of community detention houses is located in Victoria.¹⁶⁵ The number of community detention houses and people in community detention in each State and Territory was reported on 21 December 2011 as follows:

Community Detention: numbers and cost¹⁶⁶

State	Vic	Qld	NSW	SA	WA	ACT	Tas
No of houses	118	115	97	63	62	16	5
No of residents	319	305	230	208	164	65	30
Average rent paid	\$343	\$383	\$416	\$341	\$358	\$458	\$272

(Source: S Morris, 'Asylum seekers 'drive up rents', *Australian Financial Review*, 21 December

¹⁶² S Morris, 'Asylum seekers 'drive up rents', *Australian Financial Review*, 21 December 2011, p. 10.

¹⁶³ A Metcalfe, [Opening Statement to Joint Select Committee on Australia's Immigration Detention Network](#), Parliament House, Canberra, 9 December 2011, p. 3. A media report in December 2011 reported marginally different figures: 1319 people in community detention, including, 790 adults and 529 children, S Morris, 'Asylum seekers 'drive up rents', op. cit. See **Appendix Three** for DIAC statistics on the number of people in immigration detention.

¹⁶⁴ DIAC, [Immigration Detention Statistics Summary](#), op.cit., p. 4.

¹⁶⁵ S Morris, 'Asylum seekers 'drive up rents', op. cit.

¹⁶⁶ The number of houses and number of residents were reported in December 2011, S Morris, 'Asylum seekers 'drive up rents', *Australian Financial Review*, 21 December 2011, p. 10. The number of houses in each State and Territory were confirmed by DIAC in February 2012, along with the average rental cost in each State and Territory, Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing Immigration and Citizenship Portfolio](#), op. cit., p. 81.

2011, p. 10; State and Territory, Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), 13 February 2012, p. 81)¹⁶⁷

At the Additional Estimates hearing of February 2012, DIAC officials explained that, while the Department aims to ensure properties are 'safe, clean, near public transport and services', and hopes to provide some proximity to relatives, ultimately, detainees themselves do not have a choice as to where they are placed in community detention.¹⁶⁸ In NSW community detention properties were located in the following suburbs at 1 November 2011:¹⁶⁹

Location of community detention properties by suburb: NSW (Nov 2011)

Ashfield	Dural	North Curl Curl
Auburn	Doonside	Punchbowl
Bankstown	Fairfield	Regents Park
Berala	Granville	Rutherford
Blacktown	Green Valley	Smithfield
Cabramatta	Leumeah	Silverwater
Canley Heights	Lakemba	South Granville
Campsie	Merrylands	Warwick Farm
Condell Park	Mount Druitt	Wiley Park

(Source: DIAC, [Tabled document 4](#), Senate Legal and Constitutional Affairs Committee Additional Estimates 2011-12, 13 & 14 February 2012)

The total cost of the community detention program for the 2010-11 financial year was reportedly \$17.3 million, with DIAC indicating that for the 2011-12 financial year the cost to 31 December 2011 was \$50.8million.¹⁷⁰ According to DIAC ' [t]he costs incurred to date reflect the high initial costs for the program (such as securing leases, connection fees for utilities and provision of household goods in each property)'.¹⁷¹ DIAC officials explain that once a

¹⁶⁷ The figures for number of houses in each state are also indicated in: Joint Select Committee on Australia's Immigration Detention Network, [Question 61 – The Department of Immigration and Citizenship's answers to questions on notice](#), received 17 November 2011.

¹⁶⁸ Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit., p. 83.

¹⁶⁹ DIAC, [Tabled document 4](#), Senate Legal and Constitutional Affairs Committee, Additional Estimates 2011-12, 13 & 14 February 2012.

¹⁷⁰ Joint Select Committee on Australia's Immigration Detention Network, [Question 50 – The Department of Immigration and Citizenship's answers to questions on notice](#), received 8 November 2011; Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit., p.79.

¹⁷¹ Joint Select Committee on Australia's Immigration Detention Network, [Question 50 – The Department of Immigration and Citizenship's answers to questions on notice](#), received 8 November 2011. For a breakdown of the costs for community detention in

property is acquired the Red Cross or other service providers purchase a housing package to furnish the houses used for community detention, along with starter packages of food and cleaning supplies.¹⁷²

When questioned about the cost of community detention, as compared to held detention in an immigration detention centre, at the Supplementary Budget Estimates hearing of 17 October 2011, DIAC officials indicated that while a comparative figure was difficult to produce, DIAC's 'impression is that community detention is unlikely to be more expensive than held detention'.¹⁷³ As explained by Mr. Metcalfe:

I think we will find there is an average cost but in due course there will be a lower average cost because those setup costs of acquiring the property, the bond, the household formation and the furniture cost will be rolled over across multiple clients.¹⁷⁴

Indeed, as indicated previously, DIAC estimates that the movement of asylum seekers into the community on bridging visas and in community detention will yield a saving of \$400 million for the Department.¹⁷⁵

2010-11, as well as a brief outline of the Department's engagement of the Australian Red Cross in administering the community detention program see: Joint Select Committee on Australia's Immigration Detention Network, [Question 61 – The Department of Immigration and Citizenship's answers to questions on notice](#), received 17 November 2011.

¹⁷² See the 'Household goods formation package list' provided to the Senate Committee by DIAC at the Estimates Hearing of 13 February 2012: DIAC, [Tabled document 5](#), Senate Legal and Constitutional Affairs Committee Additional Estimates 2011-12, 13 & 14 February 2012. For further information about the funds expended by DIAC for starter provisions for people in community detention, as well as health costs for the program see also, Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), pp. 81-83, 87 and 99-100. See also: J Wright, ['Abbot criticized over asylum seeker comments'](#), *Sydney Morning Herald*, 17 February 2012; K Needham, 'Supporters dismiss claim of red carpet for refugees', *Sydney Morning Herald*, 18-19 February 2012, p. 10.

¹⁷³ Senate Legal and Constitutional Affairs Legislation Committee, [Supplementary Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit., 74. See also, H Spinks, E Karlsen, N Brew, M Harris and D Watt, [Australian Government spending on irregular maritime arrivals and counter people smuggling activities](#), Background Note, Commonwealth Parliamentary Library, 6 December 2011. The significant cost of mandatory detention of IMAs in held immigration detention centres has attracted criticism for many years, see: J Phillips and H Spinks, [Immigration Detention in Australia](#), op. cit., pp. 17, 21, 28. See also, K Needham, ['A third of asylum seekers to live outside detention'](#), op. cit. DIAC officials were referred to a media report published shortly prior to the Senate Estimates hearing, suggesting that detention in an immigration detention facility cost \$137, 317 per person each year, whereas community detention cost \$10, 400 per person (see: K Needham, ['Offshore processing breakdown to hit budget'](#), *The Age*, 15 October 2011). However, DIAC officials did not confirm the accuracy of these figures.

¹⁷⁴ Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit., p. 87.

On 13 February DIAC indicated that a total of 1,576 people were in community detention, including 1,047 adults and 529 children (including 133 unaccompanied minors).¹⁷⁶ DIAC estimates that 20 % of asylum seekers would be housed in community detention by 2012-13.¹⁷⁷

4. ISSUES FOR STATE GOVERNMENTS

The Gillard Government's decision to move greater numbers of asylum seekers into the community was met with criticism and concern by the State Governments of both NSW and Victoria.¹⁷⁸ The concerns of the NSW and Victorian State Governments stem from the likelihood that their respective States will house a significant proportion of those asylum seekers who are released into the community. One report cited the NSW Minister for Community Services as stating that NSW had been informed that a minimum of 4800 visas would be issued to asylum seekers in the first year of the community release policy.¹⁷⁹ It was reportedly anticipated that approximately half of those given visas would reside in NSW, with most concentrated in Sydney.

The governments of both States expressed concerns about the process by which the policy was announced and the impact that the policy of community placement would have on State resources.

4.1 Consultation between Federal and State Governments

The NSW Premier, Barry O'Farrell, and the NSW Police Minister, Mike Gallacher, reportedly expressed concern at a lack of consultation with States with regards to the provision of services that asylum seekers would need. Mr. Gallacher was quoted in a media report as saying: 'There's simply been no discussion between the state and the federal government in terms of our preparedness to handle these matters'.¹⁸⁰

A spokesperson for the Minister for Immigration and Citizenship reportedly responded to this issue by stating that the NSW Government had been

¹⁷⁵ Ibid., p. 74.

¹⁷⁶ Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), p. 79.

¹⁷⁷ K Needham, ['A third of asylum seekers to live outside detention'](#), op. cit.

¹⁷⁸ P Maley and I Salusinszky, 'Anger at bridging visas: States in revolt on refugee burden', *The Australian*, 10 December 2011, p.1; J Masanauskas, ['Government dispute over support for refugees'](#), *Herald Sun*, 10 February, 2012.

¹⁷⁹ P Maley, 'Boatpeople to 'disappear' if refugee claims refused', *The Australian*, 12 December 2011, p. 4.

¹⁸⁰ P Maley and I Salusinszky, 'Anger at bridging visas: States in revolt on refugee burden', op. cit.

informed in the course of a 'comprehensive stakeholder consultation' that the State would not incur costs in the implementation of the policy to move some asylum seekers who arrive by boat into the community.¹⁸¹

The issue of the adequacy or otherwise of mechanisms to facilitate consultation between the Federal and State Governments in dealing with aspects of migration policy involving asylum seekers emerged at the time of the protests at the Villawood Immigration Detention Centre in Sydney in April 2011. Immediately following the protests, which involved up to 100 firefighters and the NSW public order and riot squad, the NSW Premier, Barry O'Farrell, highlighted the need to establish an arrangement between Federal and State authorities with regard to immigration detention centres.¹⁸² This issue was again highlighted in the course of the Commonwealth Joint Select Committee Inquiry on Australia's Immigration Detention Network.¹⁸³ In discussing the protests at Villawood in April 2011, the Assistant Commissioner of the NSW Police Force, Frank Mennilli, raised concerns about ongoing legal uncertainty as to the respective roles of the State and Federal authorities in managing and responding to incidents at the detention centre.¹⁸⁴

In February 2012 DIAC officials acknowledged that State police forces are often involved in responding to incidents that occur in detention centres.¹⁸⁵ DIAC confirmed that a series of relevant MoUs were being negotiated with State Governments. However, Assistant Commissioner Mennilli of the NSW Police indicated in October 2011 that the issue of clarifying responsibilities between the NSW Police, DIAC and Serco (the company contracted by DIAC to run immigration detention centres) had been raised a number of years ago without resolution.¹⁸⁶ Further, he indicated that a recent draft MoU did not result in an agreement 'because the expectation from DIAC is that the New South Wales police force are going to run the detention centre for them, which is not going to be the case'.¹⁸⁷ An independent review into the incident at the Villawood Immigration Detention Centre, published in August 2011 recommended:

¹⁸¹ P Maley, 'Boatpeople to 'disappear' if refugee claims refused', *The Australian*, 12 December 2011, p. 4.

¹⁸² N Ralston, '[Buildings set alight in Villawood detention centre rooftop protests](#)', *Sydney Morning Herald*, 21 April 2011.

¹⁸³ Joint Standing Committee on Australia's Detention Network, [Official Committee Hansard](#), 5 October 2011, Sydney, pp. 28-38

¹⁸⁴ Ibid., p.29. See also: P Maley, 'Escapes escalate security crisis at detention centres', *The Australian*, 17 January 2012.

¹⁸⁵ Senate Legal and Constitutional Affairs Legislation Committee, [Supplementary Estimates Hearing, Immigration and Citizenship Portfolio](#), op. cit., p. 88.

¹⁸⁶ Joint Standing Committee on Australia's Detention Network, [Official Committee Hansard](#), op. cit., p. 33.

¹⁸⁷ Ibid., pp. 33-34.

that the issue of hand-over between DIAC and the AFP or the local Police Force be clarified, a protocol developed, tested and promulgated to support the hand-over, and consideration be given to whether the Contract should be amended to provide greater clarification in this area.¹⁸⁸

4.2 Impact on State resources

There are key areas of interaction between the Commonwealth and State and Territory Governments in relation to the detention and processing of asylum seekers who arrive by boat, particularly concerning services related to health, education, police and welfare services.¹⁸⁹

The Governments of NSW and Victoria reportedly 'attacked the federal government's current policy as a blatant exercise in burden shifting' that would stretch State resources.¹⁹⁰ It is said that both the NSW Police Minister and Victorian Minister for Multicultural Affairs and Citizenship expressed concerns at the prospect of asylum seekers being 'dumped' in the community without adequate support, thereby compromising their welfare, as well as threatening social cohesion in communities in which they are placed. Concerns were raised as to the impact of the community placement policy on a number of State services, including: health; mental health; education; housing; transport; homelessness; domestic violence and child protection; policing; translation; and housing.¹⁹¹

The NSW Government has in the past expressed concerns about 'cost shifting' from the Commonwealth to the States in relation to services for refugees and asylum seekers.¹⁹² In 2004 concerns were expressed about the long-term

¹⁸⁸ A Hawke, H Williams, [Independent review of the incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre](#), 31 August 2011, p.91.

¹⁸⁹ Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship Supplementary Submission](#), op. cit., 2011, pp. 79-80. See **Appendix Four** for DIAC's outline of these key areas of interaction between DIAC and State and Territory Governments as provided to the Senate Joint Select Committee Inquiry into Australia's Immigration Detention Network.

¹⁹⁰ P Maley and I Salusinszky, 'Anger at bridging visas: States in revolt on refugee burden', op. cit.; J Masanauskas, [Government dispute over support for refugees](#), op. cit.

¹⁹¹ Ibid.

¹⁹² NSW Government, [Cultural Harmony The Next Decade 2002-2012: Report on responses to the Green Paper and development of the Community Relations Plan of Action 2012](#), June 2004, p. 31. While one report indicates that the pressures on the offshore refugee intake as a result of the increase in asylum seekers arriving by boat and being subsequently granted protection has been a source of tension among refugees, organizations that assist asylum seekers and refugees, such as the Salvation Army and the Spectrum Migrant Resource Centre have responded by arguing that the onshore and offshore humanitarian intakes should be delinked, K Needham, 'Special visas dry up as boat arrivals given priority', op. cit.

impact on the State's health system of policies towards asylum seekers and costs to voluntary welfare organisations, particularly in assisting Temporary Protection Visa holders in the community.

The Federal Government responded to State Government financial concerns by stating that the States had been briefed that they would not incur additional financial costs as a result of the policy, as DIAC would be funding basic assistance programs for those placed in the community.¹⁹³ For example, with respect to health services (including mental health services), costs would not shift to the States because bridging visa holders would get Commonwealth assistance at a rate equivalent to Medicare to cover medical costs.¹⁹⁴ With respect to education, according to DIAC, while agreements are in place with State and Territories in instances where children are placed in government or non-government schools the Federal Government bears the cost of fees incurred.¹⁹⁵

With respect to housing, the NSW Minister for Community Services reportedly expressed concerns that the release of asylum seekers into the community would place pressure on existing stocks of affordable housing in tight rental markets around the country.¹⁹⁶ The concerns were echoed by the Real Estate Institute of Australia, which reportedly expressed concern that the Federal Government's plan to set up approximately 500 houses for people in community detention would put upward pressure on rental prices and squeeze existing stock.¹⁹⁷ However, it was also reported that State agencies had been briefed by DIAC that bridging visa applicants would not be eligible for State public housing.¹⁹⁸

In relation to housing obtained for community detention purposes, the Australian Red Cross indicated that community detention housing was spread across the nation and across capital cities to avoid exacerbating rental shortages.¹⁹⁹

¹⁹³ P Maley and I Salusinszky, 'Anger at bridging visas: States in revolt on refugee burden', op. cit. This was recently reiterated by DIAC on 13 February 2012, Senate Legal and Constitutional Affairs Legislation Committee, [*Additional Estimates Hearing, Immigration and Citizenship Portfolio*](#), op. cit., p. 88.

¹⁹⁴ K Needham, 'Psychiatrist numbers boosted to help treat asylum seeker mental health crisis', op. cit.

¹⁹⁵ Senate Legal and Constitutional Affairs Legislation Committee, [*Additional Estimates Hearing, Immigration and Citizenship Portfolio*](#), op. cit., p.88.

¹⁹⁶ P Maley, 'Boatpeople to 'disappear' if refugee claims refused', op. cit.

¹⁹⁷ S Morris, 'Asylum seekers 'drive up rents'', op. cit.

¹⁹⁸ K Needham, 'Psychiatrist numbers boosted to help treat asylum seeker mental health crisis', op. cit.

¹⁹⁹ S Morris, 'Asylum seekers 'drive up rents'', op. cit.

DIAC's first assistant secretary in charge of community programs and children, Kate Pope, reportedly confirmed that the expansion of the community detention program included considerations about 'maintaining an even spread of asylums seekers through the community', with steps being taken to avoid 'hot spots' by placing families in one apartment block or street.²⁰⁰ In addition to avoiding the use of public housing stock, and using budget rental accommodation, the director of services and international operations for the Australian Red Cross, Michael Raper, stated: '[w]e have been careful to ensure we don't put pressure on health and education infrastructure and on housing'.²⁰¹

Concerns were also reportedly expressed by heads of NSW government agencies that failed asylum seekers who may abscond and become illegal residents, or asylum seekers who leave their designated housing and gravitate to their own communities, were potentially in danger of becoming homeless or entering the criminal justice system.²⁰² According to the same report, a spokesman for the Minister for Immigration and Citizenship indicated that 'community detention release programs already in operation had suffered few absconders'. The Secretary of DIAC supported this view, stating:

Our experience with community detention and other arrangements such as people who arrive by air is that while people are still looking for an outcome from the department they will stay in touch with us.²⁰³

For an indicative listing of research published on issues facing asylum seekers living in the Australian community based on experience over the past ten years, see **Appendix Five**.

CONCLUSION

National asylum seeker policy continues to face numerous challenges arising specifically in relation to asylum seekers who arrive by boat. Ongoing key issues that it was not possible to explore in this paper include: the future of offshore processing of asylum seekers; prospects for regional approaches to responding to asylum seeker flows; mandatory detention and the management of pressures on the immigration detention network;²⁰⁴ the treatment of asylum

²⁰⁰ R Skelton, ['Thinking outside the boxes'](#), *The Age*, 16 September 2011.

²⁰¹ S Morris, 'Asylum seekers 'drive up rents'', op. cit.

²⁰² P Maley, 'Boatpeople to 'disappear' if refugee claims refused', op. cit.; P Maley and I Salusinszky, 'Anger at bridging visas: States in revolt on refugee burden', op. cit.

²⁰³ Senate Legal and Constitutional Affairs Legislation Committee, [Supplementary Estimates Hearing, Immigration and Citizenship Portfolio](#), Official Committee Hansard, op. cit., p. 111. P Mickelborough, '58, 000 illegals in Australia', op. cit. See also: Joint Select Committee on Australia's Immigration Detention Network, [Submission 54 – Asylum Seeker Resource Centre](#), pp. 15-22.

²⁰⁴ See: Senate [Joint Select Committee on Australia's Immigration Detention Network](#), which is due to report on its inquiry findings in March 2012.

seekers who are assessed as being entitled to protection, but are also subject to adverse security assessments;²⁰⁵ and the treatment of Indonesian minors who have been charged with people smuggling offences.²⁰⁶

A combination of practical and legal developments over the course of the last three years culminated in 2011 in the introduction of significant changes in the treatment of asylum seekers who arrive by boat. Most notable among these changes were the decisions to: commence onshore processing of asylum seekers; process asylum seekers who arrive by boat in the same way as asylum seekers who arrive by air; and enable greater numbers of asylum seekers who arrive by boat to live in the community by issuing them with bridging visas and expanding the community detention program. As discussed, these policy changes could potentially have an impact on NSW, as increasing numbers of asylum seekers reside in the communities rather than in secure immigration detention centres.

However, these changes have been announced in the context of continued support from both the Gillard Labor Government and the Coalition for offshore processing and mandatory detention of asylum seekers who arrive by boat. In the event that the prevailing impasse between the Gillard Government and the Coalition is overcome and legislation enabling offshore processing is passed by the Federal Parliament, it is conceivable that the current policy on the treatment of asylum seekers arriving by boat could be changed to reinstate offshore processing.²⁰⁷

Under the prevailing circumstances, the impact of the current policy of onshore processing and community release of asylum seekers on the State of NSW and cities like Sydney, where a significant proportion of asylum seekers are expected to reside, will depend on the political developments surrounding this

²⁰⁵ See: P Maley, ['Release 'red-flag' refugees: Daryl Melham'](#), *The Australian*, 18 January 2012; J Bardon, ['Darwin refugees in limbo after failing ASIO tests'](#), *ABC News*, 27 January 2012.

²⁰⁶ See: AHRC, [Age assessment in people smuggling cases: Inquiry into the treatment of individuals suspected of people smuggling offences who say they are children](#), AHRC website, 2012.

²⁰⁷ On the impasse between the Gillard Government and the Coalition on this issue see: C Bowen (Minister for Immigration and Citizenship), [Correspondence between Chris Bowen and Scott Morrison](#), media release, 24 January 2012; P Maley, ['Parties clash on cost of Nauru'](#), *The Australian*, 25 January 2012. A report of yet another boat carrying asylum seekers sinking off the coast of Malaysia in early February 2012, killing eight people was said to add pressure on the federal government and opposition to come to an agreement on asylum seeker policy, P Maley, and P Alford, ['Malaysian boat disaster raises asylum pressure'](#), *The Australian*, 3 February 2012; J Ireland, ['Asylum seeker stalemate continues despite Malaysia tragedy'](#), *Sydney Morning Herald*, 3 February 2012. A bill to reinstate offshore processing was introduced into the Federal Parliament on 13 February 2011 by the independent MP, Rob Oakshott. See the [Migration Legislation Amendment \(The Bali Process\) Bill 2012](#); K Needham, ['A third of asylum seekers to live outside detention'](#), op. cit.

issue at the federal level and the amount of time that the current policy will remain in place. The challenges posed for governments by asylum seeker movements are likely to continue into the future.

APPENDIX ONE

Select glossary of relevant UNHCR terms

Asylum: The grant, by a State, of protection on its territory to persons from another State who are fleeing persecution or serious danger. Asylum encompasses a variety of elements, including *non-refoulement*, permission to remain on the territory of the asylum country, and humane standards of treatment.

Asylum-Seeker: An asylum-seeker is an individual who is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker.

Complementary Protection: Formal permission, under national law or practice, to reside in a country extended by that country to persons who are in need of international protection even though they do not qualify for 1951 Convention refugee status.

Convention Relating to the Status of Refugees: A Convention that establishes the most widely applicable framework for the protection of refugees. The Convention was adopted in July 1951 and entered into force in April 1954. Article 1 of the 1951 Convention limits its scope to “events occurring before 1 January 1951”. This restriction is removed by the 1967 Protocol relating to the Status of Refugees. As of 1 July 2005, there are 145 States who are parties to the 1951 Convention and/or the 1967 Protocol.

Convention Refugee: Persons recognized as refugees by States under the criteria in Article 1 A of the 1951 Convention, and entitled to the enjoyment of a variety of rights under that Convention.

Country of First Asylum: The first country in which an asylum-seeker has been granted an effective hearing of his/her application for asylum.

Detention: Restriction on freedom of movement, usually through enforced confinement. Article 31 of the 1951 Convention provides certain safeguards in relation to the restriction of freedom of movement for refugees who enter or reside in the country illegally.

Durable Solutions: Any means by which the situation of refugees can be satisfactorily and permanently resolved to enable them to live normal lives. UNHCR traditionally pursues the durable solutions of voluntary repatriation, local integration and resettlement.

Internally Displaced Persons (IDPs): Those persons forced or obliged to flee from their homes, “...in particular as a result of or in order to avoid the effects of

armed conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.

International Protection: The actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries.

Protection:* A concept that encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of human rights, refugee and international humanitarian law. Protection involves creating an environment conducive to respect for human beings, preventing and/or alleviating the immediate effects of a specific pattern of abuse, and restoring dignified conditions of life through reparation, restitution and rehabilitation.

International Refugee Law: The body of customary international law and international instruments that establishes standards for refugee protection. The cornerstone of refugee law is the 1951 Convention and its 1967 Protocol relating to the Status of Refugees.

Irregular Movement of Refugees: The phenomenon of refugees or asylum-seekers moving illegally from a first country of asylum, in order to seek asylum or permanent settlement in another country.

Local Integration: A durable solution to the problem of refugees that involves their permanent settlement in a country of first asylum, and eventually being granted nationality of that country.

Mandate Refugees: Persons who are recognized as refugees by UNHCR acting under the authority of its Statute and relevant UN General Assembly resolutions. Mandate status is especially significant in States that are not parties to the 1951 Convention or its 1967 Protocol.

Non-Refoulement: A core principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle of *non-refoulement* is a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention.

Persecution: The core concept of persecution was deliberately not defined in the 1951 Convention, suggesting that the drafters intended it to be interpreted in a sufficiently flexible manner so as to encompass ever-changing forms of persecution. It is understood to comprise human rights abuses or other serious harm, often, but not always, with a systematic or repetitive element.

Persons of Concern to UNHCR: A generic term used to describe all persons whose protection and assistance needs are of interest to UNHCR. These

include refugees under the 1951 Convention, persons who have been forced to leave their countries as a result of conflict or events seriously disturbing public order, asylum seekers, returnees, stateless persons, and, in some situations, internally displaced persons. UNHCR's authority to act on behalf of persons of concern other than refugees is based on General Assembly and ECOSOC resolutions.

Refugee: A person who meets the eligibility criteria under the applicable refugee definition, as provided for in international or regional refugee instruments, under UNHCR's mandate, and/or in national legislation.

Rejection at the Border: In the refugee context, the refusal to allow an asylum-seeker entry into a prospective country of asylum. Rejection at the border may result in a violation of the principle of *non-refoulement*.

Resettlement: The transfer of refugees from the country in which they have sought refuge to another State that has agreed to admit them. The refugees will usually be granted asylum or some other form of long-term resident rights and, in many cases, will have the opportunity to become naturalized citizens. For this reason, resettlement is a durable solution as well as a tool for the protection of refugees. It is also a practical example of international burden- and responsibility-sharing.

Resettlement Country: A country that offers opportunities for the permanent settlement of refugees. This would be a country other than the country of origin or the country in which refugee status was first recognized.

Returnees: Refugees who have returned to their country or community of origin.

Unaccompanied Minors: Persons below the legal age of majority who are not in the company of an adult who, by law or custom, is responsible to do so, such as parents, guardians or primary care-givers.

Voluntary Repatriation: Return to the country of origin based on the refugees' free and informed decision. Voluntary repatriation may be *organized*, (i.e., when it takes place under the auspices of the concerned governments and UNHCR), or *spontaneous* (i.e., the refugees return by their own means with UNHCR and governments having little or no direct involvement in the process of return).

Vulnerable: Physically, mentally or socially disadvantaged persons who may be unable to meet their basic needs and may therefore require specific assistance.

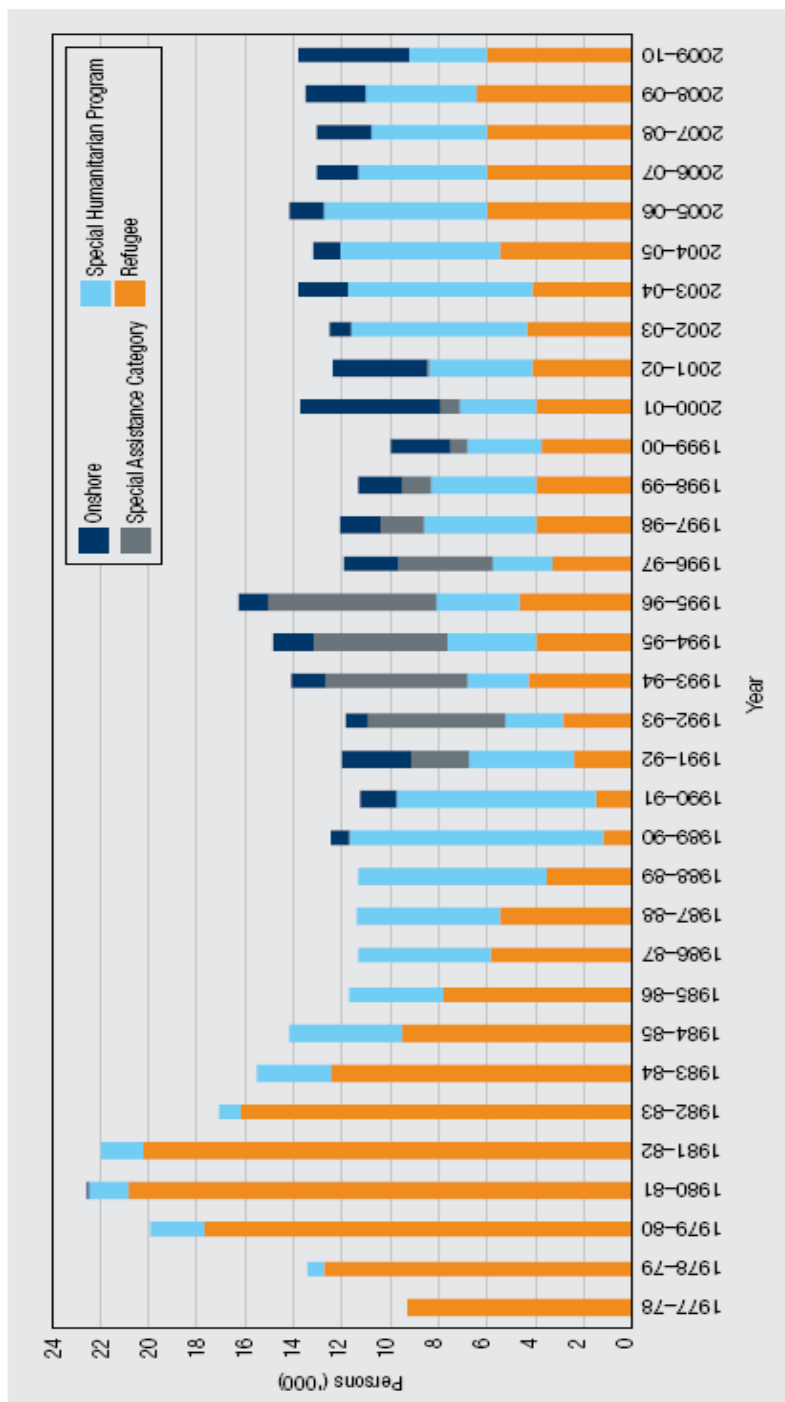
Well-Founded Fear of Persecution: see *also* Persecution. A key element of the 1951 Convention's definition of a refugee. Well-foundedness of fear contains both a subjective element (fear of persecution) and an objective element (the fear must have an objectively justifiable basis). According to the 1951 Convention, persecution must be linked to any one of the five specified

grounds: race, religion, nationality, membership of a particular social group and political opinion.

(Source: United Nations High Commission for Refugees (UNHCR), [UNHCR Master Glossary of Terms](#), June 2006)

APPENDIX TWO

Australia's Humanitarian Program visa grants 1977-78 to 2009-10



(Source: DIAC, [Population flows immigration aspects, 2009-2010 edition](#), 2011, p. 28)

APPENDIX THREE

People in immigration detention (November 2011)

Figure 1

People in Immigration Detention Facilities and Alternative Places of Detention					
Place of immigration detention ¹	Men	Women	Children	Total	Change from Previous Summary (31/10/11)
Christmas Island IDC	692	1		693	+ 64
Curtin IDC	973			973	+ 16
Maribymong IDC	77	6		83	- 9
Northern IDC (Darwin)	305			305	- 36
Perth IDC	29			29	+ 4
Pontville IDC	251			251	+ 51
Scherger IDC	219			219	- 74
Villawood IDC	303	58		361	- 11
Total in IDCs	2849	65	0	2914	+ 5
Perth Immigration Residential Housing	5		2	7	- 2
Port Augusta Immigration Residential Housing	9	9	21	39	+ 1
Sydney Immigration Residential Housing	11	4	7	22	+ 5
Adelaide Immigration Transit Accommodation	3	3		6	- 3
Brisbane Immigration Transit Accommodation	49	1		50	- 15
Melbourne Immigration Transit Accommodation	77		3	80	+ 4
Total in Immigration Residential Housing and Immigration Transit Accommodation	154	17	33	204	- 10
Alternative Places of Detention ² (Christmas Island)	64	69	119	252	+ 11
Alternative Places of Detention (Mainland)	577	173	289	1039	+ 180
Restricted on Board Vessels in Port				0	0
Total	3644	324	441	4409	+ 186
People in Community under Residence Determination³	465	325	534	1324	+ 93

¹ Immigration detention as set out under s 189 or s 249 of the *Migration Act 1958*.

² Includes detention in the community in private houses / correctional facilities / watch houses / hotels / apartments / foster care / hospitals with a person designated under the Act.

³ Residence determination as set out in the 197AB of the *Migration Act 1958*.

(Source: DIAC, [Immigration Detention Statistics Summary](#), 30 November 2011, p. 4)

APPENDIX FOUR

Interactions between DIAC and State and Territory Governments in relation to IMAs

The department's primary interactions with state and territory governments on the immigration detention network relate to providing services for people in detention – in particular, health, police, education and welfare services.

Health

When detention situations arise that require specialist intervention and treatment, IHMS refers IMAs to external health providers.

State and territory health services provide specialist public health care and hospital services under network provider arrangements with IHMS. Arrangements are in place for this in each state and territory. All costs associated with services provided by state and territory health departments are paid by IHMS on a 'fee for service' basis and passed through to the department for cost recovery. Some state and territory health departments are funded for the additional staffing and overhead costs associated with providing health services to people in immigration detention.

These arrangements are governed by a series of MoUs or in-principle agreements with each state and territory for providing health services to people in immigration detention. The department is currently working with state and territory health departments to review the current arrangements and to prepare new or revised MoUs.

The department has an in-principle agreement with the Department of Regional Australia, Regional Development and Local Government (Regional Australia). Regional Australia is responsible for the Indian Ocean Territories Health Service that provides health care services on Christmas Island.

Education

All school-aged minors (whether living in IDFs or in community detention) are provided with access to education in line with community standards and state and territory laws.

The department arranges for children who are accommodated in APODs to access education through public schools in the community or through services provided by the detention services provider. Children living in community-based detention arrangements are enrolled in a range of government and non-government schools depending on the child's needs and other factors such as the school's proximity to their home and access to English language support.

Access to schools in the community is underpinned by agreements with state and territory governments or other non-government providers, including settling costs and billing arrangements. It is anticipated that these arrangements will be finalised before the end of the 2011 school year.

Education providers support access to school education for children living in immigration detention and are working collaboratively with the department to ensure such access. Enrolments have been taking place smoothly while payment arrangement negotiations have been continuing.

Following the expansion of the use of community detention from late 2010, a small number of existing arrangements needed to be reviewed to take into account the greater number of students requiring access to new arrival programs and intensive English as a Second Language classes.

Police

As the detention population has increased so too has the number of incidents in IDFs requiring police assistance.

The department has been working with the AFP and state and territory police to develop an MoU to ensure appropriate policing responses are provided at IDFs. The MoU will be a tripartite agreement with the AFP and state and territory police and will comprise an overarching MoU with specific annexures for each jurisdiction.

When finalised, the MoU will outline when, how and in what circumstances the relevant police force and the AFP will respond to incidents at IDFs.

Welfare agencies

In making decisions about the welfare and care of unaccompanied minors in IDFs, the department draws on the advice of experts in child welfare, such as psychologists and state child welfare authorities.

The department has entered into MoUs with relevant state and territory agencies about the operation of state and territory child protection and welfare laws in IDFs.

These address the roles and responsibilities of the department and the individual state or territory welfare authorities about child welfare and protection in facilities and the processes for identifying, reporting and following up allegations of abuse or neglect.

It is mandatory for departmental staff and people working on behalf of the department, detention service provider staff and non-government organisation carers to cooperate with any investigation by a state or territory child welfare authority concerning allegations of abuse or neglect in keeping with the MoUs or standard practice where there is as yet no MoU in place.¹¹⁰

110 DIAC, Procedures Advice Manual, Detention Services Manual – Chapter 2 – Client placement – Minors in Detention – Roles and Responsibilities, 15 August 2011, section 18.2.

(Source: Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship Supplementary Submission](#), September 2011, pp. 79-80.)

APPENDIX FIVE

Research on asylum seekers in the Australian community

Z Steel, A Momartin, D Silove, M Coello, J Aroche, K W Tay, 2011, 'Two year psychosocial and mental health outcomes for refugees subjected to restrictive or supportive immigration policies', *Social Science & Medicine*, vl. 72, pp. 1149-115.

N Liddy, S Sanders, C Coleman, 2010, [*Australia's hidden homeless: community-based options for asylum seeker homelessness*](#), Hotham Mission Asylum Seeker Project.

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A Millbank, [*Asylum seekers on Bridging Visa E*](#), Research Brief no. 13, 2006-07, Commonwealth Parliamentary Library, 13 June 2007.

A McNevin, I Correa-Veldez, 2006, 'Asylum seekers living in the community on Bridging Visa E: Community sector's response to Detrimental Policies', *Australian Journal of Social Issues*, vl. 41, iss. 1.

K Kardamanidis, B Armstrong, 2006, 'The price of health care for Medicare-ineligible asylum seekers in the community', *The Medical Journal of Australia*, vl. 184, iss. 3, pp140-1.

University of Queensland Boilerhouse Community Engagement Centre, 2005, [*Defending human rights: community-based asylum seekers in Queensland*](#), University of Queensland Boilerhouse Community Engagement Centre

A McNevin, 2005, *Seeking safety, not charity: a report in support of work rights for asylum seekers living in the community on Bridging Visa E*, Network of Asylum Seeker Agencies Victoria.

S Rees, 2004, 'East Timorese women asylum seekers in Australia: extrapolating a case for resettlement services', *Australian Social Work*, vl. 57, Iss.3, pp. 259-272.

G Mitchell and S Kirsner, 2004, [*Asylum seekers living in the Australian community: a casework and reception approach*](#), Asylum Seeker Project, Hotham Mission, Melbourne', *Refugee*, vl. 22, no.1., pp. 119-128.

S Murray, S Skull, 2005, 'Hurdles to health: immigration and refugee health care in Australia', *Australian Health Review*, vl. 29, iss.1, pp. 25-9.

APPENDIX SIX

Chronology 2009-2011

The following is a chronology of key developments in relation to asylum seekers between 2009 and December 2011.

2009	
16 April 2009 <i>Fire on asylum seeker boat</i>	Five asylum seekers are killed in an explosion aboard SIEV (Suspected Illegal Entry Vessel) 36, and many others are injured. ²⁰⁸ An inquest into the incident by the Northern Territory Coroner determines that the vessel, which was intercepted by a Navy Patrol boat off Ashmore Island and was being escorted to Christmas Island, was set on fire by a group of people on the boat who believed that they would be returned to Indonesia. ²⁰⁹ It was later reported that all 47 Afghan asylum seekers who survived the explosion were granted refugee status and allowed to settle in Australia. ²¹⁰
18 March 2009 <i>Abolition of immigration detention debt</i>	The Rudd Government announces the introduction of the <i>Migration Amendment (Abolishing Detention Bill) 2009</i> to repeal the liability of immigration detention costs and waive existing debts. This was in response to recommendations of the Joint Standing Committee on Migration, and concerns raised by the Senate Legal and Constitutional Affairs Committee and the Commonwealth Ombudsman. ²¹¹ The Bill passed into law on 8 September 2009 and had the effect of removing the statutory provision that made asylum seekers liable for the costs of their detention, as well as extinguishing all immigration detention debts outstanding at the commencement of the Act. ²¹²
7 May 2009 <i>UN Committee</i>	In its concluding observations on Australia, the United Nations Human Rights Committee notes Australia's reforms to immigration

²⁰⁸ P Coorey, C Thompson, A Styles, [‘Three killed in asylum seekers’ boat explosion’](#), *Sydney Morning Herald*, 16 April 2009

²⁰⁹ [Inquest into the death of Mohammed Hassan Ayubi, Muzafar Ali Sefarali, Mohammed Amen Zamen, Awar Nadar, Baquer Husani](#) [2010] NTMC 014, cited in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), Background Note, Commonwealth Parliamentary Library, October 2010, p. 5.

²¹⁰ B Nicholson, [‘Survivors of boat explosion granted refugee status’](#), *Sydney Morning Herald*, 12 October 2009

²¹¹ Evans (Minister for Immigration and Citizenship), [Detention debt regime to be scrapped](#), media release, 18 March 2009

²¹² E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., p. 10. C Evans, [Detention debt for immigration detainees abolished](#), media release, 8 September 2009; J Phillips and H Spinks, [Immigration Detention in Australia](#), Background Note, Commonwealth Parliamentary Library, 22 December 2011, p. 13.

<i>Comments</i>	detention but remains, 'concerned at its mandatory use in all cases of illegal entry, the retention of the excise zone, as well as at the non-statutory decision-making process for people who arrive by boat to the Australian territory and are taken to Christmas Island'. ²¹³
12 May 2009 <i>Federal Budget 2009-10</i>	The Federal Government's 2009-10 Budget announcement includes the following measures: <ul style="list-style-type: none"> • \$4.8 million (including capital of \$0.2 million for information technology changes) over four years to implement a system of complementary protection for people to whom Australia has <i>non-refoulement</i> (non-return) obligations under international human rights treaties, other than the 1951 Convention Relating to the Status of Refugees • \$77.4 million over four years from 2009—10 for ongoing implementation of the new immigration detention values. This measure will include a national Assisted Voluntary Return Service and a Community Status Resolution Service, to actively manage clients to resolve their immigration status • \$5.4 million over four years to abolish the 45 Day Rule which denies work rights and Medicare access to Protection Visa applicants who do not lodge an application for a protection visa within 45 days of arrival in Australia • \$186.7 million over five years to redevelop the Villawood Immigration Detention Centre • \$654 million whole-of-government strategy to combat people smuggling and address the problem of unauthorised boat arrivals.²¹⁴
25 May 2009 <i>Alternatives to detention report</i>	The Joint Standing Committee on Migration tables its second report as part of its inquiry into immigration detention in Australia. The Report, ' Immigration detention in Australia: Community-based alternatives to detention ' makes 12 recommendations, regarding reforms to the bridging visa framework, regarding the conditions and material support for release of unlawful non-citizens into the community, while their claims for asylum are being determined. ²¹⁵
1 July 2009 <i>Abolition of '45 day rule'</i>	The Rudd Government announces that from 1 July 2009 the '45 day rule' is to be abolished. Under the rule previously protection visa applicants were required to have been in Australia for less than 45 days prior to making their visa application in order to obtain permission to work. (See the chronology in the text of the paper for more detail)
9 October 2009	The Rudd Government announces the establishment of the Council

²¹³ Human Rights Committee, 'Concluding observations of the Human Rights Committee: Australia', 2009, cited in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., p. 47.

²¹⁴ Australian Government, [Budget measures: budget paper no. 2: 2009–10](#), 2009, in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., p. 27.

²¹⁵ Joint Standing Committee on Migration, *Immigration detention in Australia: Community-based alternatives to detention*, pp. ix-xii, xxi-xxiv, cited in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., p. 33.

<i>CISSR established</i>	for Immigration Services and Status Resolution (CISSR) to 'provide independent advice on policies, services and programs to achieve timely, fair and effective resolution of immigration status for people seeking asylum or other migration outcomes in Australia.' The Council replaces the Immigration Detention Advisory Group (IDAG). ²¹⁶
11 October 2009 <i>Asylum seeker boat standoff: Merak, Indonesia</i>	The Indonesian navy apprehends a boat carrying 245 Sri Lankan asylum seekers, which was reportedly headed for Christmas Island. This followed a personal request from Prime Minister Kevin Rudd to the Indonesian President. The boat was taken to the Javan port of Merak, where, after six months of negotiations, on 20 April 2010, the last of the passengers on the boat disembarked to be processed in Indonesia. ²¹⁷
18 October 2009 <i>Oceanic Viking</i>	After being rescued at sea 56 Sri Lankan asylum seekers refuse to disembark from the Australian customs vessel, the Oceanic Viking . Following a month of negotiations, including options for resettlement for those found to be refugees, on 18 November the last of the asylum seekers disembark and are taken into detention in the port of Tanjung Pinang in Bintan, Indonesia. ²¹⁸
23 October 2009 <i>AHRC report: immigration detention and offshore processing</i>	The Australian Human Rights Commission (AHRC) released its report, ' 2009 Immigration detention and offshore processing on Christmas Island '. The Commission made 22 recommendations and expresses concerns about a range of issues, including the effects of excision and offshore processing through non-statutory refugee status assessment on asylum seekers, the policy of mandatory detention, detention on Christmas Island, the detention of children, the provision of health and mental health care services to detainees. ²¹⁹ The Rudd Government responds by affirming its commitment to the excision of territory from Australia's migration zone and the mandatory detention of offshore entry persons who arrive by boat on Christmas Island. ²²⁰
December 2009	By the end of 2009 a total of 61 boats had arrived in Australia,

²¹⁶ C Evans (Minister for Immigration and Citizenship), [Minister announces new immigration advisory council](#), media release, 9 October 2009.

²¹⁷ P Veness, '[Indonesia pushes asylum seekers for deal](#)', Sydney Morning Herald, 7 April 2010; T Allard, '[Refugee standoff ends in tears and entreaties](#)', *The Age*, 20 April 2010.

²¹⁸ B O'Connor (Minister for Home Affairs), [ACV Oceanic Viking](#), media release, 24 October 2009; B Doherty, '[Tamils set for mixed welcome to detention](#)', *Sydney Morning Herald*, 18 November 2009.

²¹⁹ AHRC, *2009 Immigration detention and offshore processing on Christmas Island*, 2009, cited in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., p. 42.

²²⁰ C Evans (Minister for Immigration and Citizenship), [Government committed to mandatory detention on Christmas Island](#), media release, 23 October 2009.

<i>Boat arrivals</i>	carrying a total of 2849 people (including crew). 7 boats arrived in 2008 carrying a total of 161 people (excluding crew). ²²¹
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2010	
23 February 2010 <i>Anti-People Smuggling bill introduced</i>	The Rudd Govt announces the introduction of the <i>Anti-People Smuggling and Other Measures Bill 2010</i> as part of a 'comprehensive approach to combating people smuggling'. The measures in the bill include: the harmonisation of people smuggling offences in the Migration Act and Commonwealth Criminal Code; intelligence gathering regarding people smuggling; the creation of new offences for financing and supporting people smuggling activities; the application of mandatory minimum penalties where people are convicted of multiple offences. ²²² The bill passes into law on 13 May 2010. ²²³
27 March 2010 <i>89 Asylum seekers transferred to Villawood Detention Centre</i>	The Minister for Immigration announces that 89 asylum seekers who have been refused protection will be transferred to Villawood Immigration Detention Centre. ²²⁴ Villawood is 'considered Australia's primary immigration detention facility' and 'has typically been used to accommodate individuals pending removal from Australia, namely those individuals who have breached their visa conditions or who have been denied entry to Australia at the border and are being returned to their country of origin'. ²²⁵ Prior to this announcement, Villawood was primarily used to house non-IMA cases.
9 April 2010 <i>Suspension of processing of new asylum applications from Sri Lankan and Afghani</i>	The Rudd Government announces the immediate suspension of processing of new asylum applications from Sri Lankan and Afghani asylum seekers, with the suspensions to be reviewed at the end of three months and six months, respectively. ²²⁶ (See the chronology in the text of the paper).

²²¹ J Phillips and H Spinks, [Boat arrivals in Australia since 1976](#), Background Note, Commonwealth Parliamentary Library, July 2011, p. 18.

²²² R McClelland (Attorney-General), C Evans (Minister for Immigration and Citizenship), B O' Connor (Minister for Home Affairs), [Legislation to combat people smuggling](#), media release, 23 February 2010.

²²³ E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., p. 12.

²²⁴ C Evans (Minister for Immigration and Citizenship), [89 asylum seekers refused and transferred to Villawood Immigration Detention Centre](#), media release, 27 March 2010.

²²⁵ Joint Select Committee on Australia's Immigration Detention Network, [Submission 32 – Department of Immigration and Citizenship](#), August 2011, 'Immigration detention facilities in Australia', p. 10.

²²⁶ C Evans (Minister for Immigration and Citizenship), S Smith (Minister for Foreign Affairs), B O'Connor (Minister for Home Affairs), [Changes to Australia's immigration processing system](#), media release, 9 April 2010; UNHCR, [UNHCR disappointed at](#)

asylum seekers	Nine days later the Government announces that the Curtin detention centre in Western Australia will be used to accommodate single male asylum seekers who are affected by the suspension. The UNHCR expresses concern at the decision to reopen the Curtin detention centre. ²²⁷ The first transfer to Curtin detention centre is announced on 12 June 2010. ²²⁸
11 May 2010 <i>Federal Budget 2009-10</i>	The Rudd Government's 2010-2011 Budget announcement includes the following measures: <ul style="list-style-type: none"> • \$32.9 million over four years to enhance Indonesia's capacity to manage irregular migration flows in the region. The measure includes additional funding to the International Organisation for Migration to support the Indonesian Government in upgrading a number of immigration detention facilities and extra funding to the United Nations High Commissioner for Refugees for the processing of refugee status determinations. • \$202.0 million over five years (including \$183.3 million in capital funding, and \$18.7 million in related expenses) to ensure appropriate accommodation for asylum seekers. The measure provides for funding of \$143.8 million for increased capacity at immigration detention facilities. The measure also provides capital funding for a number of upgrades and enhancements to essential amenities and security at existing facilities, consisting of \$22.0 million for Christmas Island, \$15.0 million for the Northern Immigration Detention Centre in Darwin, \$1.5 million for Villawood in Sydney and \$1.0 million to upgrade existing residential facilities at Port Augusta (South Australia) for unaccompanied minors. • \$5.8 million over two years to deploy two officers from the Department of Immigration and Citizenship to Kabul, Afghanistan. The officers will liaise with the Afghan Government and relevant international organisations to assist with the appropriate settlement and re-integration of returned Afghan nationals.²²⁹

[Australian decision to reopen detention centre for asylum- seekers](#), UNHCR website, 20 April 2010.

²²⁷ C Evans (Minister for Immigration and Citizenship), [Curtin to hold suspended asylum seekers](#), media release, 18 April 2010; UNHCR, [UNHCR disappointed at Australian decision to reopen detention centre for asylum- seekers](#), cited in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., p. 20.

²²⁸ C Evans (Minister for Immigration and Citizenship), [First transfer to Curtin Immigration Detention Centre under way](#), media release, 12 June 2010.

²²⁹ Australian Government, [Budget measures: budget paper no. 2: 2010-11](#), Commonwealth of Australia, Canberra, 2010, in in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., pp. 27-28.

	<ul style="list-style-type: none"> • Payments to the Red Cross for delivery of the Asylum Seeker Assistance (ASA) Scheme have increased by more than 80% from \$5.6 million to over \$10 million.²³⁰
1 June 2010 <i>Transfer of 30 families from Christmas Island to Leonora, WA</i>	The Rudd Government announces the transfer of 30 families who are detained on Christmas Island to a temporary alternative detention site containing 'self-contained lodge style accommodation' in the Western Australian town of Leonora. The Minister states: 'the detainee accommodation pressures on Christmas Island required his department to investigate a range of private properties around Australia as potential additional temporary accommodation options for families and children.' ²³¹
5 July 2010 <i>UNHCR releases guidelines for Sri Lanka</i>	UNHCR releases its UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka . The cessation of armed conflict in May 2009 has improved human rights and security in Sri Lanka. In light of this, the UNHCR states: 'there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country.' However, the UN emphasises that the situation is evolving, and '[a]ll claims by asylum-seekers from Sri Lanka should be considered on their individual merits in fair and efficient refugee status determination procedures and taking into account up-to-date and relevant country of origin information.' ²³² (pp.1, 3.)
6 July 2010 <i>Regional processing centre policy</i>	Newly sworn in Prime Minister, Julia Gillard, announces her Government's policy of seeking to establish a regional processing centre to receive irregular migrants in the region and process their asylum claims. (See the chronology in the text of the paper).
21 August 2010 <i>Federal election 2010</i>	A minority Labor Government is formed. Key points of agreement in the two major parties' platforms in relation to asylum seekers include: <ul style="list-style-type: none"> • In principle offshore processing of asylum seekers who arrive by boat: However, the Labor Party supports the establishment of a regional processing centre as part of a regional approach involving the UNHCR and neighbouring countries. The Coalition want to revive the offshore processing centre in Nauru. • The excision of Australian territories from the migration zone. • Mandatory detention of asylum seekers who arrive by boat

²³⁰ Refugee Council of Australia, [The 2010-11 Budget in brief: what it means for refugees and those requiring humanitarian protection](#), RCOA website, 2010.

²³¹ C Evans (Minister for Immigration and Citizenship), [Leonora site prepares for irregular maritime arrival transfer](#), media release, 1 June 2010.

²³² UNHCR, [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka](#), UNHCR website, 5 July 2010, pp. 1, 3, cited in E Karlsen, [Developments in Australian refugee law and policy 2007-2010](#), op. cit., p. 20.

	<p>at offshore entry places.</p> <p>Key points of difference include:</p> <ul style="list-style-type: none"> • Labor suspension of processing of asylum claims • Coalition policy of 'turning boats back' • Coalition 'no card, no entry' policy: denial of refugee status to asylum seekers who destroy their identity documents • Coalition policy of reintroducing temporary protection visas (TPVs), reintroducing the '45 day rule' and introducing mutual obligations for TPV holders.²³³
<p>17 September 2010</p> <p><i>Expansion of immigration detention facilities</i></p>	<p>The Gillard Government announces that in order to ease pressure on existing immigration detention facilities the use of detention facilities in the Melbourne Transit Accommodation facility and the Curtin Immigration Detention centre will be expanded, and the Sherger Air Force base in Queensland will be used to house detainees on a short term basis.</p> <p>The Minister for Immigration and Citizenship explains: 'existing facilities are operating at capacity and there is a need for more beds to be made available until outstanding applications can be finalised.'</p> <p>The first transfer to Sherger detention centre is announced on 22 October 2010.²³⁴</p>
<p>30 September 2010</p> <p><i>Suspension of Afghan asylum claims lifted</i></p>	<p>The Gillard Government announces that the suspension of the processing of asylum claims from Afghanistan has been lifted.²³⁵</p>

²³³ Refugee Council of Australia (RCOA), [Refugee Policy in the 2010 Federal election campaign: what the parties are saying](#), Sydney, 2010.

²³⁴ C Bowen (Minister for Immigration and Citizenship), [Additional immigration detention accommodation](#), 17 September 2010; C Bowen (Minister for Immigration and Citizenship), [Transfer begins to Sherger Immigration Detention Centre](#), media release, 22 October 2010.

²³⁵ C Bowen (Minister for Immigration and Citizenship), [Suspension of processing of Afghan asylum seeker claims to be lifted](#), media release, 30 September 2010. [Statistics](#) indicate that, globally, Afghanistan has been the primary country of origin for refugees for the last three decades. Afghanistan has also been the main source country for asylum seekers arriving in Australia by boat, since the recent increase in boat arrivals. J Phillips, [Seeking asylum from Afghanistan](#), *FlagPost*, Commonwealth Parliamentary Library, 19 October 2010. See also, M Dimasi, [The beginning of the journey](#), *Inside Story*, 6 October 2010; J Kelly, [Refugee groups say government advice on Hazara asylum seekers is wrong](#), *The Australian*, 1 October 2010.

18 October 2010 <i>Children and families moved into community-based detention</i>	The Gillard Government commits to progressively moving several hundred unaccompanied children and vulnerable family groups out of immigration detention facilities and into community-based detention by June 2011. ²³⁶ Also announced are new detention facilities in Northam (WA) and Inverbrackie (South Australia) to 'relieve the current pressures on existing facilities'. Consultations surrounding the Inverbrackie detention centre stir discontent in the local community. The first transfer of asylum seekers to Inverbrackie is announced on 18 December 2010. ²³⁷
11 November 2010 <i>High Court judgment</i>	The High Court of Australia delivers its judgment in the cases of Plaintiff M61/2010E v Commonwealth of Australia; Plaintiff M69 of 2010 v Commonwealth of Australia [2010] HCA 41. (See the chronology in the text of the paper). (See 'January 2011' for changes to the process for assessing asylum claims introduced following this judgment)
15 December 2010 <i>Sinking of SIEV 221 off Christmas Island</i>	SIEV 221, carrying an unknown number of asylum seekers founders in treacherous seas and crashes onto rocks off Christmas Island. Initial estimates suggest that approximately 70 asylum seekers may have been on board, with up to 50 being feared dead. It was subsequently confirmed that rescuers recovered the bodies of 30 women, men, and children, 42 people survived, and 20 were still missing, presumed dead. ²³⁸ On 2 March 2011, The Australian Parliament establishes a Joint Select Committee on the Christmas Island Tragedy to inquire into this incident. The Committee publishes its report on 30 June 2011.
December 2010 <i>Boat arrivals</i>	By the end of 2010 a total of 134 boats had arrived in Australia, carrying a total of 6879 people (including crew). 7 boats arrived in 2008 carrying a total of 161 people (excluding crew), and 61 boats, carrying a total of 2849 people (including crew) in 2009. ²³⁹

²³⁶ J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), [Government to move children and vulnerable families into community-based accommodation](#), media release, 18 October 2011.

²³⁷ C Bowen (Minister for Immigration and Citizenship), [Inverbrackie Detention Facility consultation](#), media release, 22 November 2010; C Bowen (Minister for Immigration and Citizenship), [First group of asylum seekers arrive at Inverbrackie](#), media release, 18 December 2010; B Williamson, [Adelaide Hills asylum detention centre polarizes community](#), 891 ABC Adelaide, 19 October 2010.

²³⁸ N Perpitch, T Barrass, J Kelly, ['50 feared dead in Christmas Island asylum-seeker boat crash'](#), *The Australian*, 15 December 2010; Joint Select Committee on the Christmas Island Tragedy of 15 December 2010, [Report](#), Commonwealth of Australia, June 2011, vii-viii.

²³⁹ J Phillips and H Spinks, [Boat arrivals in Australia since 1976](#), op. cit., p. 18.

2011	
7 January 2011 <i>Introduction of the Protection Obligations Determination</i>	The Gillard Government announces changes to the refugee determination process for asylum seekers arriving by boat, or irregular maritime arrivals (IMAs) in response to the High Court decision of 11 Nov 2010. ²⁴⁰ (See the chronology in the text of the paper).
17 January 2011 <i>MoU with Afghanistan regarding repatriations</i>	The Gillard Government announces the signing of a Memorandum of Understanding (MoU) with the government of Afghanistan and the UNHCR dealing with : 'humanitarian migration of Afghans to Australia under Australia's special humanitarian program, the provision of assistance to Afghanistan to build capacity in their government ministries, and the sustainable return to Afghanistan of Afghans found not to be owed protection by Australia'. The announcement states that the MoU was signed as part of attempts to deter asylum seekers from Afghanistan from travelling to Australia by boat. ²⁴¹ The announcement is met with some criticism , with questions raised regarding the information on which the Government's reassessment of the security situation in Afghanistan was based. ²⁴²
24 February 2011 <i>Complementary Protection Bill</i>	The Migration Amendment (Complementary Protection) Bill 2011 is introduced into federal Parliament and assented to on 14 October 2011. The objective of the legislation is to: introduce a statutory regime for assessing claims that may engage Australia's <i>non-refoulement</i> (non-return) obligations under various international human rights treaties otherwise known as 'complementary protection'. The Bill proposes to assess such claims under a 'single protection visa application process' which means applicants that are found not to be refugees but owed protection on complementary protection grounds, will be entitled to be granted protection visas with the same conditions and entitlements as refugees. In turn, unsuccessful applicants (that is, applicants found not to be owed protection) will have equivalent administrative review rights as persons seeking protection under the... 1951 Refugee Convention. ²⁴³
1 March 2011 <i>Expansion of community detention</i>	The Minister for Immigration announces that since the Gillard Government's commitment of 18 October 2010 to move the majority of children and vulnerable family groups out of immigration detention facilities and into community based accommodation by

²⁴⁰ C Bowen (Minister for Immigration and Citizenship), [Government announces faster, fairer refugee assessment process](#), media release, 7 January 2011.

²⁴¹ C Bowen (Minister for Immigration and Citizenship), [Migration and Humanitarian Cooperation MoU signed with Afghanistan and UNHCR](#), media release, 17 January 2011.

²⁴² W Maley, ['Reckless plan for Afghans will cost lives'](#), *The Age*, 20 January 2011

²⁴³ E Karlsen, [Migration Amendment \(Complementary Protection\) Bill 2011](#), Bills Digest no. 79, 2010-11, Commonwealth Parliamentary Library, p. 3

	June 2011, the community detention network has been expanded and 268 people moved into community based accommodation. ²⁴⁴ (See the chronology in the text of the paper).
3 March 2011 <i>New Darwin detention centre</i>	The Gillard Government announces the establishment of a new detention centre at Wickham Point in Darwin, as well as the expansion of the existing detention facility at the Darwin Airport Lodge, to 'help relieve pressure on existing facilities including Christmas Island' ²⁴⁵
12 March 2011 <i>Christmas Island Detention Centre protest</i>	The Department of Immigration reports on a 'disturbance' on Christmas Island involving fifty detainees undertaking protest action on 11 March. ²⁴⁶ The Refugee Council of Australia (RCOA) argues that the protest action is linked to mental health issues facing detainees and indicates the need for reforms to the immigration detention strategy. The RCOA also expresses concern at the use of tear gas by the Australian Federal Police (AFP) in responding to detainees. ²⁴⁷ On 18 March 2011 the Minister for Immigration announces an independent review into the Christmas Island Detention Centre protests to investigate and report on a range of issues associated with management and security at the Centre. The Minister also indicates that the AFP is reviewing its use of force at the Christmas Island Detention Centre, in accordance with its internal guidelines on the matter. ²⁴⁸ Further protests by detainees are reported in July 2011. ²⁴⁹
17 March 2011 <i>Death of asylum seeker in detention</i>	The Department of Immigration and Citizenship reports on the death of a 20 year old Afghan national, who was an irregular maritime arrival, at Sherger Detention Centre in Queensland. ²⁵⁰
4 April 2011 <i>UNHCR figures</i>	Figures released by the UNHCR indicate that at a total of 358, 800 asylum applications were lodged in industrialized countries in 2010 – the fourth lowest figure in the last decade and 42% of the 620 000 applications filed in 2001. Australia saw a 33 % increase in the number of asylum applications received compared with 2009, but

²⁴⁴ C Bowen (Minister for Immigration and Citizenship), [Moving asylum seekers children into the community](#), media release, 1 March 2011.

²⁴⁵ C Bowen (Minister for Immigration and Citizenship), [Government announces new and expanded immigration detention accommodation](#), media release, 3 March 2011.

²⁴⁶ DIAC, [Christmas Island disturbance](#), media release, 12 March 2011.

²⁴⁷ Refugee Council of Australia (RCOA), [Detention needs overhaul not band-aid fix](#), media release, 15 March 2011.

²⁴⁸ C Bowen (Minister for Immigration and Citizenship), [Independent review into Christmas Island Detention Centre protests and escapes](#), media release, 18 March 2011.

²⁴⁹ ABC News, [Tear gas used on detention centre protesters](#), 20 July 2011; ABC News, [Second night of protests on Christmas Island](#), 21 July 2011.

²⁵⁰ DIAC, [Death at Sherger Immigration Detention Centre](#), media release, 17 March 2011.

	still accounted for only 8250 of the 358 800 asylum applications lodged in industrialised countries in 2010. ²⁵¹
5 April 2011 <i>New detention centre in Tasmania</i>	The Minister for Immigration announces that a defence facility in Pontville, Tasmania, will be the site of a temporary new detention centre to accommodate up to 400 single adult men. The new facility is a short term response to help relieve strain on the detention system while detention centres in Wickham Point in Darwin, and Northam in Western Australia are being completed. ²⁵² Community consultations undertaken by DIAC reportedly allayed initial concerns about the centre. The first transfers into Tasmania's Pontville detention facility were announced on 1 September 2011. ²⁵³
14 April 2011 <i>Ombudsman's inquiry into immigration detention centres</i>	The Commonwealth Ombudsman, Mr. Alan Asher, announces his intention to conduct an investigation into the use of force in the response to protests by detainees on Christmas Island in March 2011. He also indicates he is considering 'an investigation into the appropriateness of the physical facilities within which asylum-seekers are held and the extent to which DIAC and SERCO have developed and implemented programs to identify and manage those at risk of suicide'. The Ombudsman expresses concerns about the impact of long-term detention on the ongoing mental health of immigration detainees, stating: 'As long as there are families with children, unaccompanied minors and other vulnerable people in immigration detention facilities on Christmas Island, and as long as there are risks to their health and well-being as a consequence of inadequate services, I consider that DIAC is in breach of the Australian Government's own detention values.' ²⁵⁴ The RCOA welcomes the Ombudsman's announcement and notes that there have been five suicides in immigration detention centres over a period of six months. ²⁵⁵
20 April 2011 <i>'Major disturbance' at</i>	DIAC reports a ' major disturbance ' at the Villawood Immigration Detention Centre, involving 100 detainees, in which nine buildings were set alight. ²⁵⁶ The NSW Premier, Barry O'Farrell reportedly

²⁵¹ UNHCR, [Asylum levels and trends in industrialised countries 2010](#), 28 March 2011; UNHCR, [Asylum seeker numbers nearly halved in last decade, says UNHCR](#), media release, 28 March 2011.

²⁵² Chris Bowen (Minister for Immigration and Citizenship), [New short-term detention centre in Tasmania](#), media release, 5 April 2011.

²⁵³ P Billings, [Mayor open to extended refugee stay](#), *The Examiner*, 3 September 2011; ABC News, [Mixed reaction to Tasmanian detention centre](#), 6 April 2011; C Bowen (Minister for Immigration and Citizenship), [Transfers begin at Pontville centre](#), media release, 1 September 2011.

²⁵⁴ Commonwealth Ombudsman, [Government breaches its own care principles? Ombudsman investigates](#), media release, 14 April 2011.

²⁵⁵ RCOA, [Scrutiny of detention welcomed](#), media release, 14 April 2011.

²⁵⁶ DIAC, [Villawood disturbance](#), media release, 21 April 2011.

<i>Villawood Detention Centre</i>	expresses concern at the lack of an agreement between the state and federal governments about how to deal with detention centre riots, indicating that NSW emergency services had been asking for such an agreement to be put in place. ²⁵⁷
26 April 2011 <i>Introduction of strengthened character test</i>	The Minister for Immigration announces that he will move amendments to the Migration Act, including a tougher character test to 'strengthen the consequences of inappropriate and criminal behaviour in immigration detention.' ²⁵⁸ The Minister also indicated his intention to 'use the full extent of his powers to prevent people who have been involved in criminal, violent or destructive behaviour, from being allowed to apply for a permanent protection visa'. The announcement is reportedly met with some criticism. ²⁵⁹ The Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011 was introduced into Federal Parliament on 11 May 2011 and assented to on 27 July 2011.
7 May 2011 <i>Australia - Malaysia agreement announced</i>	The Australian and Malaysian governments commit to entering into a bilateral arrangement concerning the transfer of asylum seekers and refugees between the two countries. The aim of the agreement is to 'help tackle people smuggling and irregular migration in the Asia-Pacific region' as part of the Regional Cooperation Framework agreed to at the Bali Process Ministerial Conference on 30 March 2011. ²⁶⁰ (See the chronology in the text of the paper).
10 May 2011 <i>Federal Budget 2011-12</i>	In the 2011-12 federal Budget the Gillard Government announces an expansion of the Humanitarian Program intake by 4000 places over the next 4 years, as part of the Regional Cooperation Framework. The Humanitarian Stream would include: <ul style="list-style-type: none"> - 7000 places for the refugee program (primarily those referred for resettlement by the UN – including 12% for the 'women at risk' program). - 7750 places in the special humanitarian program, including for people who have sought Australia's protection after arrival in this country and are subsequently found to be refugees. - Focus will be on refugees from Africa, Middle East and Asia.²⁶¹ The Budget also provides for significant increases in expenditure

²⁵⁷ N Ralston, '[Buildings set alight in Villawood detention centre rooftop protests](#)', *Sydney Morning Herald*, 21 April 2011; AAP, '[Villawood rooftop protesters' claims already rejected](#)', *Sydney Morning Herald*, 21 April 2011.

²⁵⁸ C Bowen (Minister for Immigration and Citizenship), '[Tougher character test to send clear message](#)', media release, 26 April 2011.

²⁵⁹ C Duffy, '[Gillard Government cracks down on asylum seekers](#)', *7.30 Report*, ABC, 26 April 2011.

²⁶⁰ J Gillard (Prime Minister), '[Joint statement with the Prime Minister of Malaysia](#)', media release, 7 May 2011.

²⁶¹ C Bowen (Minister for Immigration and Citizenship), '[Budget 2011-12: Boost to Australia's Humanitarian Program](#)', media release, 10 May 2011.

	for offshore asylum seeker management and for combating people smuggling. ²⁶²
26 May 2011 <i>Report on Villawood Detention Centre</i>	The AHRC releases its Report into the Villawood Immigration Detention Centre, finding that 'uncertainty caused by indefinite detention and delays in refugee processing and security assessments were triggering serious mental health issues'. The Commission states that it has: 'been deeply concerned for some time about the detrimental impacts of prolonged and indefinite detention on people's mental health and wellbeing, but these concerns have escalated over the past 12 months as thousands of people are being detained for long periods.' It notes that at 6 May 2011 there were 6715 people in immigration detention across Australia, over half of whom were in detention for longer than 6 months. ²⁶³
16 June 2011 <i>Parliamentary Inquiry</i>	The Federal Parliament establishes the Joint Select Committee on Australia's Detention Network . ²⁶⁴ (See the chronology in the text of this paper).
17 June 2011 <i>Contributions of humanitarian entrants</i>	A new study commissioned by DIAC on the ' Economic, social and civic contributions of first and second generation humanitarian entrants ' finds that over the long term humanitarian entrants to Australia have outcomes of 'considerable achievement and contribution'. ²⁶⁵
29 June 2011 <i>Community detention</i>	The Minister for Immigration announces that up to 62% of children in detention have been moved to community detention arrangements. ²⁶⁶
25 July 2011 <i>Australia-Malaysia transfer agreement signed</i>	The ' Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement ' is signed, and operational details of the arrangement are made public. ²⁶⁷ (Please see the chronology in the text of the paper).
7 August 2011 <i>High Court</i>	Proceedings commence in the High Court of Australia seeking an interim injunction restraining removal of the first group of asylum

²⁶² H Spinks, J Phillips, E Karlsen, N Brew, [Budget 2011-12: Responding to boat arrivals](#), Budget Review 2011-12. Commonwealth Parliamentary Library, 2011.

²⁶³ AHRC, [Self-harm and suicides in immigration detention are major concerns](#), media release, 26 May 2011.

²⁶⁴ [Joint Select Committee on Australia's Immigration Network website](#), 1 February 2012.

²⁶⁵ C Bowen (Minister for Immigration and Citizenship), [New research highlights refugee contribution](#), media release, 17 June 2011.

²⁶⁶ C Bowen (Minister for Immigration and Citizenship), [Government meets commitment on community detention](#), media release, 29 June 2011.

²⁶⁷ '[Instrument of Declaration of Malaysia as a Declared Country under Subsection 198A\(3\) of the Migration Act 1958](#)', registered on 18 August 2011, ComLaw website, cited in E Karlsen, [Migration Legislation Amendment \(Offshore Processing and Other Measures\) Bill 2011](#), Bills Digest No. 53, 2011-12, Commonwealth Parliamentary Library, 22 September 2011, p. 3.

<i>proceedings: Malaysia declaration</i>	seekers to be transferred to Malaysia under the bilateral Arrangement signed on 25 July 2011. Justice Hayne grants the plaintiffs in the case interlocutory relief in the form of a temporary injunction. In the week of 22 August the Full Bench of the High Court is convened to consider whether the Immigration Minister's 'declaration' of Malaysia as a country to which asylum seekers can be transferred had been made validly under section 198A of Migration Act.
19 August 2011 <i>Australia – PNG sign MoU</i>	The Immigration Minister announces that the governments of Australia and Papua New Guinea have signed a MoU regarding the establishment of an assessment centre on Manus Island. The Minister states: 'The Manus Island centre will complement the Malaysia transfer arrangement and provide further disincentive for people considering risking their lives on dangerous boat journeys'. ²⁶⁸
31 August 2011 <i>High Court decision: Malaysia declaration invalid</i>	The Full Bench of the High Court of Australia hands down its decision in the case of Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship, [2011] HCA 32 . (See the chronology in the text of the paper).
4 September 2011 <i>Solicitor- General's advice</i>	The Gillard Government releases the Commonwealth Solicitor-General's advice on the implications of the High Court decision in Plaintiff M70/2011. ²⁶⁹ (See the chronology in the text of the paper).
12 September 2011 <i>Offshore processing bill</i>	The Gillard Government announces the introduction of the Migration Legislation Amendment (Offshore Processing and Other Measures) Bill 2011 . ²⁷⁰ (See the chronology in the text of the paper).
13 October 2011 <i>Onshore processing</i>	The Gillard Government announces that as a result of the High Court decision and the subsequent legislative impasse, the Government will commence onshore processing of asylum seekers who arrive by boat. ²⁷¹ (See the chronology in the text of the paper).
18 October 2011	The UNHCR releases its 'Asylum levels and trends in industrialised

²⁶⁸ C Bowen (Minister for Immigration and Citizenship), [Australia and Papua New Guinea sign MoU](#), media release, 19 August 2011.

²⁶⁹ S Gageler, S Lloyd and G Kennett, [In the matter of the implications of Plaintiff M70/2011 v Minister for Immigration and Citizenship for offshore processing of asylum seekers under the Migration Act 1958 \(Cth\)](#), opinion SG no. 21 of 2011, 2 September 2011, cited in E Karlsen, [Migration Legislation Amendment \(Offshore Processing and Other Measures\) Bill 2011](#), op. cit., p. 9.

²⁷⁰ J Gillard (Prime Minister), C Bowen (Minister for Immigration and Citizenship), [Legislation to restore Migration Act powers](#), media release, 12 September 2011; E Karlsen, [Migration Legislation Amendment \(Offshore Processing and Other Measures\) Bill 2011](#), op. cit.

²⁷¹ J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), [Joint Press Conference Canberra with Julia Gillard – Prime Minister of Australia and Chris Bowen MP – Minister for Immigration and Citizenship](#), media release, 13 October 2011.

<i>UNHCR asylum seeker statistics released</i>	countries-first half of 2011 ²⁷¹ . The figures indicate that there was a 17% increase in the number of asylum applications received by industrialised countries in the first half of 2011 compared to the same period one year before. However, asylum claims in Australia and New Zealand were reduced by one fifth in the same period, compared to the previous year. The Immigration Minister, Chris Bowen, observed in the announcement of 13 October 2011 that there had been a reduction in the number of unauthorised boat arrivals after the announcement of the Malaysia arrangement in May 2011.
1 November 2011 <i>Asylum seeker boat sinks off Java</i> <i>Detering People Smuggling Bill introduced</i>	Reports that a boat suspected to be carrying about 70 people planning to seek asylum in Australia capsized off the coast of Java, killing 8 people, with 15 people missing. ²⁷² The Federal Government introduces the Detering People Smuggling Bill 2011 into Parliament to amend people smuggling offences in the Migration Act 1958. (see for Explanatory memo). The proposed amendments seek to clarify the meaning of the phrase 'no lawful right to come to Australia', which was being contested in the Victorian Court of Criminal Appeal and due to be heard in Court on 3 November. The Bill attracts criticism for, among other things, the proposed retrospective application of the provision setting out the circumstances in which unlawful non-citizens have no lawful right to come to Australia, for the purposes of people smuggling offences. ²⁷³ The Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee on 3 November 2011. The Committee tabled its report on 21 November 2011, recommending that, subject to revisions to explicitly explain the exceptional circumstances necessary for the introduction of the Bill, its retrospective application and its application to current legal proceedings, the Senate pass the Bill. The Bill was passed by both houses of Federal Parliament and assented on 29 November 2011.
15 November 2011 <i>Forced deportation</i>	A media report indicates that the Gillard Government is to undertake the first forced deportation of an Afghan asylum seeker under the terms of a controversial return agreement with the Afghan government. The Afghan embassy in Australia is reportedly 'unhappy with forced deportations of its nationals'. ²⁷⁴
21 November 2011 <i>AHRC inquiry: age</i>	In the context of reports that erroneous age determination processes may be leading to the lengthy incarceration of Indonesian teenagers for alleged people smuggling offences, the Australian Human Rights Commission(AHRC) announces an

²⁷² G Roberts, '[Hope fades for asylum seekers missing in shipwreck](#)', ABC News, 2 November 2011.

²⁷³ E Karlsen and J Phillips, [Detering People Smuggling Bill 2011, Bills Digest No. 82, 2011-12](#), Commonwealth Parliamentary Library, 21 November 2011, pp. 3, 5.

²⁷⁴ K Needham, '[Afghan asylum seekers to be forcibly deported](#)', Sydney Morning Herald, 15 November 2011.

<i>determination in people smuggling cases</i>	inquiry into the treatment of suspected people smugglers who claim to be children. ²⁷⁵ The AHRC releases a discussion paper to inform the inquiry in December 2011.
25 November 2011 <i>Bridging visas; consistent processing</i>	The Minister for Immigration announces the approval of bridging visas for asylum seekers who arrived by boat, and the introduction of a single consistent process for assessing asylum claims from both air and boat arrivals. ²⁷⁶ (See the chronology in the text of the paper).
29 November 2011 <i>Detention report</i>	The Immigration Minister releases the independent report into the incidents of unrest at the Christmas Island and Villawood detention centres earlier in 2011. The Minister states that the Government had accepted all 48 recommendations of the Review. ²⁷⁷
3 December 2011 <i>ALP platform</i>	The ALP national conference endorses offshore processing via "regional cooperation and bilateral arrangements" in refugee processing for the first time, in exchange for changing the party's aspirational refugee intake to 20,000 a year. ²⁷⁸
18 December 2011 <i>Asylum seeker boat sinks off the coast of Java</i>	Reports that a boat carrying approximately 250 Iranians and Afghans, which was headed for Australia, sank off the coast of Java on 17 December. Further reports indicate that 47 survivors had been rescued in the aftermath of the disaster. ²⁷⁹ In the aftermath of the incident, both the Federal Government and the Federal Opposition disagree about how to reinstate offshore processing. ²⁸⁰ The political impasse over legislative changes to enable offshore processing endured in ensuing weeks and into the beginning of 2012. ²⁸¹

²⁷⁵ N O'Brien, 'Treatment of Indonesian children to be investigated', *Sydney Morning Herald*, 23 November 2011; Australian Human Rights Commission (AHRC), [Commission announces inquiry into the treatment of suspected people smugglers who say they are children](#), media release, 21 November 2011. See also, J Phillips, 'Determining the ages of people smugglers', *FlagPost*, Commonwealth Parliamentary Library, 21 November 2011.

²⁷⁶ C Bowen (Minister for Immigration and Citizenship), [Bridging visas to be issued for boat arrivals](#), media release, 25 November 2011.

²⁷⁷ C Bowen (Minister for Immigration and Citizenship), [Independent report on detention unrest released](#), media release, 29 November 2011.

²⁷⁸ B Packham, [Labor platform endorses offshore processing of asylum-seekers](#), *Sydney Morning Herald*, 3 December 2011. See also: C Bowen, [We can give hope to people who would never dare to dream](#), *Sydney Morning Herald*, 1 December 2011; C Bowen (Minister for Immigration and Citizenship), [Interview with Marius Benson, ABC Newsradio](#), media release, 1 December 2011.

²⁷⁹ A Stevenson, [Minister won't talk politics over Java boat tragedy](#), *Sydney Morning Herald*, 18 December 2011; T Allard, [Rescuers find 13 on island off East Java](#), *Sydney Morning Herald*, 20 December 2011.

²⁸⁰ K Needham, [Pleas ignored as each side claims the high moral ground and the boats keep coming](#), *Sydney Morning Herald*, 20 December 2011.

²⁸¹ See for example C Bowen (Minister for Immigration and Citizenship), [Doorstop](#)

December 2011 <i>Boat arrivals</i>	By the end of 2011 a total of 68 boats had arrived in Australia, carrying a total of 4664 people (including crew). ²⁸² These figures compared to a total of 7 boats in 2008 carrying a total of 161 people (excluding crew); 61 boats, carrying a total of 2849 people (including crew) in 2009; and 134 boats carrying a total of 6879 people (including crew) in 2010.
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[interview, Sydney](#), media release, 20 December 2011; T Lester, ['Abbot says 'no' three times to compromise on boat people'](#), *Sydney Morning Herald*, 20 December 2011; K Needham, ['Dear Mr. Abbot, let's talk. Dear Prime Minister, put it in writing'](#), *Sydney Morning Herald*, 20 December 2011; T Iggulden, ['Christmas truce on asylum seekers'](#), *AM, ABC News*, 24 December 2011.

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Source: J Phillips, Commonwealth Parliamentary Library, unpublished boat arrivals data, received 13 January, 2012. However, on 13 February DIAC officials indicated that 67 boats had arrived in 2011, with 6 having arrived to date in 2012, Senate Legal and Constitutional Affairs Legislation Committee, [Additional Estimates Hearing, Immigration and Citizenship Portfolio](#), Official Committee Hansard, 13 February 2012, Canberra, p.89.