BACKGROUND NOTE   updated 23 September 2010

Boat arrivals in Australia since 1976

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Introduction

The term 'boat people' entered the Australian vernacular in the 1970s with the arrival of the first wave of boats carrying people seeking asylum from the aftermath of the Vietnam War. Over half the Vietnamese population was displaced in these years and, while most fled to neighbouring Asian countries, some embarked on the voyage by boat to Australia.[1]

The first boat arrived in Darwin in April 1976 carrying five Indochinese men. Over the next five years there were 2059 Vietnamese boat arrivals with the last arriving in August 1981.[2] The arrival of 27 Indochinese asylum seekers in November 1989 heralded the beginning of the second wave. Over the following nine years, boats arrived at the rate of about 300 per annum—mostly from Cambodia, Vietnam and southern China.[3] In 1999, a third wave of asylum seekers, predominantly from the Middle East, began to arrive—often in larger numbers than previous arrivals and usually with the assistance of 'people smugglers'.[4]

This background note provides a brief overview of the historical and political context surrounding boat arrivals in Australia since 1976. It includes background on the global context; government policy responses; trends in public opinion on the issues; and links to some of the key resources. This publication also includes boat arrival figures drawn from available sources, including media reports, ministerial press releases and figures supplied by the Department of Immigration and Citizenship (DIAC). It is envisaged that the boat arrival figures in Appendix A will be updated on a regular basis.

The global context

The magnitude and complexity of the issues arising from the flow of asylum seekers globally poses huge challenges for the world's 'receiving' countries—Australia included. When the United Nations High Commission for Refugees (UNHCR) was established in 1951, there were an estimated 1.5 million refugees internationally. By 1980 the number of refugees was estimated at 8.2 million. It is important to note that these figures are only estimates and do not include the number of internally displaced people (IDPs) or asylum seekers.[5]

Currently, the UNHCR collects statistics for several population categories collectively referred to as 'persons of concern'. The categories in the annual UNHCR report, *Global Trends*, include:

> **Refugees**: individuals recognized under the 1951 Convention relating to the Status of Refugees; its 1967 Protocol; the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems

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1. Department of Immigration and Multicultural Affairs (DIMA), Immigration: federation to century's end 1901–2000, Canberra, 2001, p. 51, viewed 6 April 2009, http://www.immi.gov.au/media/publications/statistics/federation/
2. K Betts, 'Boatpeople and public opinion in Australia', *People and place*, vol. 9, no. 4, 2001, p. 34, viewed 6 April 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FACP56%22
3. K Betts, p. 36; and D McMaster, *Asylum seekers: Australia's response to refugees*, Melbourne, 2001, p. 73.
4. K Betts, p. 37.
5. D McMaster, p. 9.

in Africa; those recognized in accordance with the UNHCR Statute; individuals granted complementary forms of protection; or, those enjoying "temporary protection". The refugee population includes people in a refugee-like situation.

Asylum-seekers: individuals who have sought international protection and whose claims for refugee status have not yet been determined. Those covered [by the UNHCR] refer to claimants whose individual applications were pending at the end of 2008, irrespective of when they may have been lodged.

Internally displaced persons: people or groups of individuals who have been forced to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural- or human-made disasters, and who have not crossed an international border.[6]

While estimates of the numbers of 'persons of concern' fluctuate and the country of origin of asylum seekers, IDPs and refugees vary year by year, the figures continue to climb. In 2007, the total population of concern to the UNHCR was estimated at 31.7 million people, including 11.4 million refugees.[7] By the end of 2008, the number of individuals requesting refugee or asylum status to the 51 European and non-European countries that report to the UNHCR increased by 12 per cent—41 600 more applications—compared to 2007.[8] In its *2007 Global Trends* report released in June 2008, the UNHCR stated that:

> Despite UNHCR's efforts to find durable solutions, the number of refugees and internally displaced persons (IDPs) under its care rose by 2.5 million in the course of the year, reaching an unprecedented 25.1 million by the end of the reporting period. The number of refugees under UNHCR's responsibility rose from 9.9 to 11.4 million by the end of 2007.[9]

The figures in the *2008 Global Trends* report remain high:

> There were some 42 million forcibly displaced people worldwide at the end of 2008. This includes 15.2 million refugees, 827 000 asylum seekers (pending cases) and 26 million internally displaced people (IDPs) … Despite UNHCR's efforts to find durable solutions during 2008, the total number of refugees and IDPs under its care remained high at roughly 25 million, almost unchanged compared to 2007, and together accounted for about three quarters of all people falling under the UNHCR mandate.[10]

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6.   For more detail and a full list of these categories see UNHCR, *2008 Global trends: refugees, asylum-seekers, returnees, internally displaced and stateless persons*, June 2008, pp. 3–6, viewed 18 June 2009, http://www.unhcr.org/4a375c426.html

7.   UNHCR, *Statistical yearbook 2007*, December 2008, p. 7, viewed 15 April 2009, http://www.unhcr.org/pages/4a02afce6.html

8.   UNHCR, *Asylum levels and trends in industrialized countries 2008*, March 2009, p. 3, viewed 16 April 2009, http://www.unhcr.org/statistics/STATISTICS/49c796572.pdf

9.   UNHCR, *2007 Global trends: refugees, asylum-seekers, returnees, internally displaced and stateless persons*, June 2008, p. 2, viewed 1 May 2009, http://www.unhcr.org/statistics/STATISTICS/4852366f2.pdf

10.   UNHCR *2008 Global trends*, pp. 2–3.

It is clear from these figures that issues arising from the movement of displaced people are unlikely to wane any time soon. The regional UNHCR representative, Richard Towle, recently pointed out that further destabilisation of countries such as Afghanistan, Iraq and Sri Lanka, will inevitably lead to more people seeking asylum in our region regardless of national border protection policies or changes to migration legislation.[11] In the case of Sri Lanka, for example, on 28 April 2009 the UNHCR recorded more than 160 000 new arrivals in Sri Lanka's temporary camps for displaced people. There was also great concern for those remaining in the country—the UNHCR estimated that in April alone, approximately 50 000 civilians were unable to reach safety.[12]

A balancing act

The rise in the number of people seeking asylum and, in particular, the 'unauthorised' or 'illegal' mode of their arrival across borders, has raised concerns globally for many decades. The governments of destination countries around the world universally struggle to maintain a reasonable balance between attending to the immediate needs of displaced people seeking assistance and controlling movements across national borders.

In the case of Australia, concerns over 'unauthorised' boat arrivals or 'boat people' have occupied successive governments since the 1970s. However, many argue that the number of boat arrivals in Australia is very small in comparison to the significant flows of 'unauthorised' arrivals in other parts of the world over the last few decades.[13] In the US, for example, it is estimated that more than 500 000 'illegal aliens' arrive each year.[14] Similarly, other parts of Europe struggle to monitor and control the large influxes from countries such as Africa each year.[15] In comparison, in 2008 there were 7 boat arrivals in Australia with a total of about 179 people on board.

It is relevant to note that the Immigration Minister has acknowledged the small scale of the problem in Australia compared to countries in Europe and other parts of the world.[16] It is also worth noting that the majority of onshore asylum seekers actually arrive in Australia by air with a valid visa and then apply for onshore protection through Australia's humanitarian program at some stage after

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11. T Arup, 'Increase in boat people predicted: UN blames global turmoil for rise', *The Age*, 11 April 2009, viewed 16 April 2009,
     http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1O9T6%22

12. UNHCR, *Refugee e-alert*, 28 April 2009 and UNHCR, *UN ups response in Sri Lanka*, media release, 28 April 2009, viewed 16 June 2009, http://www.unhcr.org/49f70be45.html

13. D McMaster, p.125.

14. See J Van Hook, F Bean and J Passel, *Unauthorized migrants living in the United States: a mid-decade portrait*, Migration Information Source, 2005, viewed 9 April 2009,
     http://www.migrationinformation.org/feature/display.cfm?ID=329

15. See for example 'Italy illegal immigration soars', *BBC News*, 15 August 2008, viewed 11 June 2009,
     http://news.bbc.co.uk/2/hi/europe/7564584.stm

16. 'Seeking Asylum', *Insight*, SBS, 19 May 2009.

their arrival.[17] In spite of this, the debate continues to focus on those asylum seekers arriving without authorisation by boat.

Even in the peak boat arrival years of the 1970s and 1999–2001, the arrival numbers in Australia were small compared to other destination countries. In 2000, for example, when approximately 3000 'boat people' arrived in Australia, Iran and Pakistan each hosted over a million Afghan refugees. In fact, the burden of assisting the world's asylum seekers mostly fell, and still falls, to some of the world's poorest countries.[18]

In terms of refugee resettlement, only about 20 nations worldwide participate in UNHCR resettlement programs and accept quotas of refugees on an annual basis. Australia is one of the countries formally participating and each year the Government allocates around 13 000 available places through the Department of Immigration's Humanitarian Program. In 2008, Australia accepted the third largest number of refugees for resettlement in the world (8742) after the USA (60 191) and Canada (10 804) under the UNHCR resettlement program.19

However, in terms of the total number of 'people of concern' globally, the UNHCR's resettlement program currently contributes to resettling only a small proportion of the world's refugees. About 75 to 90 per cent of asylum seekers remain in their region of origin placing the burden on neighbouring countries:

> The available statistical evidence demonstrates that most refugees remain in their region of origin and flee to neighbouring countries. Indeed, the major refugee generating regions hosted on average between 75 and 91 per cent of refugees within the region. UNHCR estimates that some 1.7 million refugees (16 per cent out of the total of 10.5 million) live outside their region of origin.[20]

• In 2008, for example, Pakistan was host to the largest number of refugees worldwide (1.8 million), followed by Syria (1.1 million) and Iran (980 000).[21]

The UNHCR also provides statistics both on asylum applications per population and GDP per capita as an indicator of the capacity of destination countries to host asylum seekers. In terms of individual share in the total number of asylum applications received per 1000 inhabitants, of the 51 countries

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17. Note the statement 'The majority of asylum seekers arrive in Australia with a valid visa and live in the community while they pursue their claims' in DIAC, *Monthly detention snapshot*, 1 May 2009, viewed 3 June 2009, http://www.newsroom.immi.gov.au/media_releases/705

18. Edmund Rice Centre for Justice and Community Education, *Debunking the myths about asylum seekers*, September 2001, viewed 2 June 2009, http://www.erc.org.au/just_comments/1029891642.shtml

19. USCRI, *World refugee survey 2009*, Tables and graphs, Resettlement by country, viewed 18 June 2009, http://www.refugees.org/FTP/WRS09PDFS/Resettlementbycountry.pdf

20. UNHCR *2008 Global trends*, p. 7. Four out of five refugees reside in developing countries, UNHCR, p. 4.

21. UNHCR *2008 Global trends,* p. 2. For discussion of the challenges for neighbouring countries see, N Kelly, 'International refugee protection challenges and opportunities', *International journal of refugee law*, vol. 19, no. 3, 1 October 2007, viewed 19 June 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FR3NP6%22

that are currently included in the UNHCR report *Asylum levels and trends in industrialized countries 2008*, Australia was ranked number 22 in 2008, or 0.2 per 1000 inhabitants and number 24 per 1 USD/GDP per capita for 2004–08. It was the less prosperous countries of Cyprus and Malta that received the highest number of applications compared to their national populations in 2008. France and the USA received the highest number of applications per capita compared to their national economies.[22]

Some commentators such as Myra White argue that as global conflict escalates and refugee numbers rise, destination countries globally should be focusing more on refugee resettlement measures and less on border control:

> As government policy becomes more punitive, escalation of global conflict has forced many refugees to flee persecution, increasing pressure on countries such as Britain and Australia.   … Whilst migration is not a new phenomenon—on the contrary, both countries have long histories of immigration and settlement——the concept of 'asylum' has moved from a positive image of the 'settler refugee' to the refugee 'burden' … This article questions … whether it might be possible to have 'a more progressive agenda based on a commitment to human rights' rather than a fixation on control and restriction.[23]

Boat arrivals and public opinion

Although the first wave of 'boat people' (1976–81) was initially received by the Australian public with some sympathy, continuing arrivals quickly became a matter of increasing concern. Public discussion soon focused on such issues as rising unemployment and the impact of people 'jumping the immigration queue'.[24] Boat arrivals was a dominant topic in the news at the time of the 1977 federal election, with widespread claims that Australia was losing control of migrant selection.[25] As the numbers of people arriving by boat increased, opposition grew, with increasing references in the press to an 'invasion', 'flood' and 'yellow peril'.[26] Dissatisfaction with the numbers of 'boat people' arriving in Australia and being allowed to stay spread to the trade union movement, with the Darwin branch of the Waterside Workers' Federation in 1977 calling for strikes to protest at the 'preferential treatment' refugees were receiving.[27] Concern over the boat arrivals focused not only on the perceived lack of control over Australia's borders, but also on whether the arrivals were 'genuine

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22. UNHCR, *Asylum levels and trends in industrialized countries 2008*, pp. 8, 9 and 13, viewed 4 June 2009, http://www.unhcr.org/statistics/STATISTICS/49c796572.pdf

23. M White, 'Asylum policy in the UK and Australia: a pathway to social exclusion?', *Migration action*, vol. 26, no. 1, 2004, viewed 19 June 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F32AD6%22

24. E Richards, Destination Australia: migration to Australia since 1901, 2008, p. 263.

25. K Betts, p. 34.

26. N Viviani, *The long journey: Vietnamese migration and settlement in Australia*, Melbourne University Press, Carlton, 1984, p. 79.

27. N Viviani, p. 79.

refugees', with some claiming that they were pirates, rich businessmen, drug runners, and communist infiltrators.[28]

The second wave of boat arrivals (1989–98) was initially a dominant news topic due primarily to the fact that those arriving in this way were now routinely being held in detention, often for long periods.[29] However, the issue was largely forgotten as time went on, as periods spent in detention were reduced and most arrivals were sent back.[30] Boat arrivals once again became highly newsworthy with the start of the third wave in 1999, as numbers began to increase dramatically.

In 2001, sociologist Katharine Betts analysed opinion poll data on the issue of boat arrivals from the previous 25 years and found that 'there was no sudden desire to close the door on boatpeople dating only to the last couple of years. This has been a slow and growing trend over the last quarter of a century'.[31] Her analysis showed that:

- in the late 1970s, 60 per cent of Australians wanted to let a limited number of refugees arriving by boat stay, between seven and 13 per cent wanted to let any number stay, and between 20 and 32 per cent wanted to stop them from staying

- in 1993, 44 per cent of people wanted to send 'boat people' straight back without assessing their claims, and 46 per cent approved of holding 'boat people' in detention while their claims were being assessed. Only 7 per cent believed boat arrivals should be allowed to stay

- in September 2001, 77 per cent of Australians supported the Howard Government's decision to refuse entry to the *Tampa* and 71 per cent believed boat arrivals should be detained for the duration of the processing of their asylum application and

- those who supported an 'open borders' approach to asylum seekers in 2001 did so mainly for humanitarian reasons, and also claimed that the Howard Government's hardline policies were damaging Australia's reputation overseas.[32]

There appeared to have been a subtle shift in public attitudes towards boat arrivals in the last few years of the Coalition Government. In particular, mandatory immigration detention had increasingly been criticised as revelations came to light concerning cases of wrongful detention and mistreatment of detainees.[33] The dramatic decrease in boat arrivals between 2003 and 2007 also

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28. N Viviani, p. 79.
29. Immigration detention for boat arrivals at this time was permitted under the *Migration Act*, but *mandatory* detention was a matter of policy, not law—a migration officer had discretion to detain a suspected illegal entrant, but detention was not mandated by the Act. See below for an outline of the history of mandatory immigration detention.
30. K Betts, p. 37.
31. K Betts, p. 45.
32. K Betts, pp. 40–3.
33. For example see J Macken, 'High cost of detention hits home', *Australian Financial Review*, 25 May 2005, viewed 1 June 2009,
    http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FXN4G6%22
    The two most high profile cases regarding wrongful detention were those of Australian resident Cornelia Rau and

meant that public debate on the issue received less attention, as boat arrivals largely dropped out of the news.

However, since late 2008, following a number of boat arrivals, debate regarding how best to handle the issue has flared once again. Changes in policy, made by the Rudd Labor Government, concerning how asylum seekers are received and managed (discussed further below) have also contributed to this. An April 2009 *Newspoll* survey found that 37 per cent of voters believed the Government was doing a good job managing the asylum seeker issue, and only 36 per cent believed that tougher policies would make any difference in stopping the flow of unauthorised boat arrivals.[34]

The political debate and policy responses

The arrival of 'boat people' and the policy responses of successive governments has been a hot political issue since boats first began arriving in Australia in the 1970s. This has particularly been the case over the last two decades, which has seen the introduction of what have been considered by many to be 'hard-line' policies, such as mandatory detention for unauthorised boat arrivals introduced by the Keating Government, and the various policies of the Howard Government all aimed at curbing boat arrivals. Some of these are discussed in more detail below. The significance of boat arrivals to the political scene in Australia was perhaps never more evident than in 2001 when, according to some commentators, the Howard Government's tough stance on asylum-seekers and boat arrivals swept it to victory in the November federal election.[35]

The political and policy response to boat arrivals has typically been twofold: emphasising the importance of ensuring that those arriving unauthorised by boat meet the Convention definition of a refugee (see glossary in Appendix B); and attempting to stop further flows of people from reaching Australia in this way. For instance, successive governments have focused on engaging other countries and international organisations in an attempt to stop the flow of refugees at the source, or on arranging for refugee processing to occur elsewhere. In 1977–78 approaches were made to regional governments to hold vessels in transit to allow refugee processing in camps. The Government also increased the number of Indochinese refugees accepted for resettlement from camps in Southeast Asia in an effort to reduce the number of people likely to attempt the journey by boat.[36] In 1982 the Fraser Government introduced individual determination of status procedures in

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Australian citizen Vivian Alvarez (who was briefly detained before being deported to the Philippines). These cases were the subject of individual inquiries: *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (Palmer Report), viewed 12 June 2009, http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf and *Inquiry into the Circumstances of the Vivian Alvarez Matter* (Comrie Report), viewed 12 June 2009, http://www.immi.gov.au/media/publications/pdf/alvarez_report03.pdf

34. P Maley and L Taylor, 'Boatpeople regime has nation divided', *The Australian*, 21 April 2009, viewed 25 May 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FSLBT6%22

35. I McAllister, 'Border protection, the 2001 Australian election and the Coalition victory', *Australian journal of political science*, vol. 38, no. 3, November 2003, pp. 445–63; and K Betts, 'Boatpeople and the 2001 election', *People and place*, vol. 10, no. 3, 2002, pp. 36–54.

36. N Viviani, p. 80.

order to ensure only 'genuine' Indochinese refugees were admitted to Australia.[37] In 1983, the Hawke Government endorsed the 'durable solutions' to the Indochinese refugee problem proposed by the UNHCR: first, voluntary repatriation; second, social integration in the country of first asylum; and as only the last resort, resettlement in third countries such as Australia.[38]

The 1990s through to the mid 2000s saw an increase in policies aimed at deterring asylum seekers from coming to Australia by boat including the introduction of mandatory detention laws, the excision of external territories from the migration zone and offshore processing for those arriving at such places and the introduction of temporary protection visas. These measures have been complemented by more traditional 'border security' measures such as enhanced coastal surveillance, and increased engagement with transit countries such as Indonesia and Malaysia in an attempt to stop people smuggling at its source.

Since coming to power in November 2007 the Rudd Government has ended some of the policies put in place by the Howard Government to discourage unauthorised arrivals and focused its attention largely on border security measures designed to disrupt the work of people smugglers. Most recently the Government announced, as part of the 2009–10 federal Budget, $654 million 'to fund a comprehensive, whole-of-government strategy to combat people smuggling and help address the problem of unauthorised boat arrivals'.[39] The following sections provide more detail on these major policy responses.

Given the relatively small number of arrivals, some argue that the policy responses by governments to unplanned migration in Australia over the years may be excessive.[40] Recently some commentators have suggested that the new budget measures may be a disproportionate response to actual boat arrivals. One post-Budget press report argued:

> The politics of border protection have skewed the Rudd Government's national security priorities with the budget committing $654 million to stop the flow of asylum seekers heading for Australian shores.[41]

37. I Macphee (Minister for Immigration and Ethnic Affairs), 'Refugee policy and procedures', Statement to the House of Representatives, 16 March 1982, in *Immigration policies in action*, Australian Government Publishing Service, Canberra, 1982, pp. 39–45.

38. Department of Immigration and Ethnic Affairs, *Review '83*, Australian Government Publishing Service, Canberra, 1983, p. 31.

39. B Debus (Minister for Home Affairs), *$1.3 billion to combat people smuggling and strengthen Australia's national security*, media release, Canberra, 12 May 2009, viewed 1 June 2009, http://www.ministerhomeaffairs.gov.au/www/ministers/ministerdebus.nsf/ Page/MediaReleases_2009_SecondQuarter_12May2009- $1.3BilliontoCombatPeopleSmugglingandStrengthenAustraliasNationalSecurity

40. D McMaster, pp. 9, 98, 125–126.

41. P Dorling, 'Border politics drive up funding', *The Canberra Times*, 13 May 2009, p. 22, viewed 15 May 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F7FJT6%22
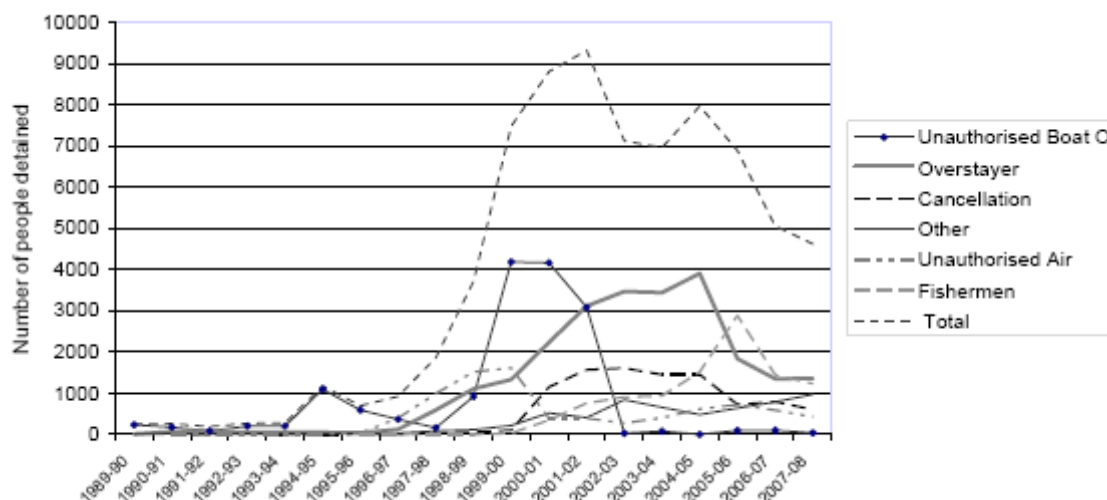
Mandatory detention

Prior to 1992 unauthorised boat arrivals were held in detention under the *Migration Act 1958*, but on a discretionary basis. Mandatory immigration detention for unauthorised arrivals was introduced by the Keating Government in 1992 under the *Migration Amendment Act 1992*, as part of the codification of migration policy. The rationale given by the then immigration minister, Gerry Hand, was that detention would facilitate the processing of refugee claims, prevent de facto migration and save the cost of locating people in the community.[42] Mandatory detention for *all* unlawful non-citizens (that is, any non-citizen who does not hold a valid visa) was introduced under the *Migration Reform Act 1992*, the majority of which commenced on 1 September 1994. The intention behind the extension of mandatory detention to all unlawful non-citizens was to effectively regulate not only the determination of refugee status but also the removal of people who do not establish an entitlement to be in Australia.[43] Under the current legislation, if a migration officer reasonably suspects that a person is an unlawful non-citizen, the officer must detain the person.[44]

Detention is mandated for all unlawful non-citizens in Australia, and for much of the past two decades people in immigration detention have been predominantly visa overstayers, unauthorised air arrivals, and those whose visa has been cancelled, rather than those who have arrived unauthorised by boat. The exception to this was the period between 1999 and 2002, which saw a spike in the numbers of boat arrivals in detention. Since that time however the number of boat arrivals has been low, and those arriving by boat have comprised a very small component of the detention population. The largest single category in detention since 2003 has generally been visa overstayers (see Figure 1). Despite this, the policy debate surrounding mandatory detention has focused primarily on its application with regards to asylum seekers arriving by boat.

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42. G Hand 'Second reading speech: Migration Amendment Bill 1992', House of Representatives, *Debates*, 5 May 1992, p. 2370.
43. G Hand, 'Second reading speech: Migration Reform Bill 1992', House of Representatives, *Debates*, 4 November 1992, p. 2620.
44. Migration Act 1958, s.13

Figure 1: Trends in immigration detention by arrival type and/or reason for detention[45]

A 1998 report from the Human Rights and Equal Opportunity Commission (HREOC) on the policy of mandatory detention argued that the policy breached international human rights standards and that when detention was prolonged many of the conditions in which people were detained became unacceptable and breached Australia's human rights obligations.[46] The report also called for children and other vulnerable people to be detained only in exceptional circumstances.

In 2004 HREOC published *A last resort?: the report of a national inquiry into children in immigration detention*, which was highly critical of the mandatory detention of children. The inquiry found that 'Australia's immigration laws, as administered by the Commonwealth, and applied to unauthorised arrival children create a detention system that is fundamentally inconsistent with the *Convention on the Rights of the Child* (CRC).[47] The inquiry further found that children in long term immigration detention were at risk of serious mental harm and that failure to remove children from detention together with their parents constituted cruel, inhumane and degrading punishment.

The Howard Government rejected the findings and recommendations of the report and in June 2004 reaffirmed its commitment to the policy of mandatory detention, including that of children.[48] The

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45. Joint Standing Committee on Migration*, Immigration detention in Australia: community-based alternatives to detention,* Canberra, May 2009, p. 173, viewed 4 June 2009, http://www.aph.gov.au/house/committee/mig/detention/report2/fullreport.pdf

46. Human Rights and Equal Opportunity Commission, *Those who've come across the seas: Detention of unauthorised arrivals*, Commonwealth of Australia, May 1998, viewed 4 June 2009, http://www.hreoc.gov.au/pdf/human_rights/asylum_seekers/h5_2_2.pdf

47. Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention*, Commonwealth of Australia, April 2004, viewed 22 May 2009, http://www.hreoc.gov.au/human_rights/children_detention_report/index.html

48. A Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs*), HREOC Inquiry into children in immigration detention report tabled*, media release, Canberra, 13 May 2004, viewed 22 May 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2TKC6%22

then Immigration Minister, Senator Vanstone, stated that 'to release all children from detention in Australia would be to send a message to people smugglers that if they carry children on dangerous boats, parents and children will be released into the community very quickly'.[49]

Despite the Government's initial rejection of the report's recommendations, the following year Prime Minister Howard, following significant pressure from his backbench, announced a softening of immigration detention policy, including the release of families with children into community detention arrangements.[50] The changes announced on 17 June 2005 were presented as preserving the broad framework and principle of mandatory detention, but with a 'softer edge'. Other changes included: the introduction of a three month time limit to apply to both the primary protection visa decision and the merits appeal decision by the Refugee Review Tribunal; Ombudsman's reports and recommendations concerning people in detention longer than two years to be tabled in Parliament; and the extension of the immigration minister's discretionary powers to grant visas. The *Migration Amendment (Detention Arrangements) Act 2005* came into force on 29 June 2005. In his second reading speech the Minister for Citizenship and Multicultural Affairs emphasised that while greater flexibility was being introduced, the broad framework of the Government's approach to unauthorised arrivals remained unaltered. The Government remained committed to mandatory detention along with the excision of territory for migration purposes, offshore processing and, if necessary, turning boats around at sea.[51]

Since coming to power in November 2007 the Rudd Government has taken a new policy direction regarding the mandatory detention of unauthorised arrivals. On 29 July 2008 the Minister for Immigration and Citizenship, Senator Chris Evans, announced an overhaul of the policy of mandatory detention. The new policy dictates that people will be detained as a 'last resort', rather than as standard practice. Unauthorised arrivals are detained on arrival for identity, health and security checks, but once these have been completed the onus is on the Department to justify why a person should continue to be detained. Ongoing detention is justified for people considered to pose a security risk or those who do not comply with their visa conditions, but current policy is for the majority of people to be released into the community while their immigration status is resolved. [52]

49. A Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs*), Government committed to detention regime*, media release, Canberra, 10 June 2004, viewed 25 May 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FAZ2D6%22

50. J Howard (Prime Minister), *Immigration detention*, media release, Canberra, 17 June 2005, viewed 1 June 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FKWDG6%22

51. P McGauran, 'Second reading speech: Migration Amendment (Detention Arrangements) Bill 2005', House of Representatives, *Debates*, 21 June 2005, p. 55.

52. C Evans (Minister for Immigration and Citizenship), *New directions in detention: restoring integrity to Australia's immigration system*, speech delivered to Centre for International and Public Law, Australian National University, 29 July 2008, viewed 25 May 2009, http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm

The 'Pacific Solution'

In the pre-election environment of 2001, the Howard Government introduced legislative changes allowing some of Australia's territory to be excised from the migration zone in order to discourage non-citizens from arriving unlawfully in Australia by boat. People attempting to do so since then have been intercepted at sea where possible and either returned to Indonesia, removed to third countries in the Pacific, or sent to Australia's immigration facilities at Christmas Island. Any claims made by those people for refugee status could then be processed by the Immigration Department outside the jurisdiction of Australian courts, and with no guarantee of a resettlement place in Australia. These border protection measures were officially known as the Pacific Strategy, although they become colloquially known as the 'Pacific Solution'.[53]

The so-called 'Pacific Solution' was a response to the events of August 2001 when 433 asylum seekers en route to Australia were rescued from their sinking vessel by a Norwegian freighter, the *Tampa*. The *Tampa* was refused entry to Australia although the ship's master eventually defied this order and did enter Australia's territorial waters where it was interdicted by the Special Air Service (SAS). The asylum seekers were subsequently transferred to HMAS *Manoora* and sent to the Pacific island of Nauru.

In September 2001 Parliament passed the Migration Amendment (Excision from Migration Zone) Bill 2001 and The Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001, giving legislative effect to the Pacific Solution. The Bills amended the Migration Act 1958 to excise Christmas, Ashmore, Cartier and Cocos (Keeling) Islands from the migration zone. As a result, any unlawful non-citizen attempting to enter Australia via one of these islands was now prevented from making a valid application for a protection visa unless the Minister for Immigration determined that it was in the public interest for that person to do so.

On 19 September 2001 Australia signed an Administrative Agreement with Nauru to accommodate asylum seekers for the duration of the processing of their applications. This was replaced by a Memorandum of Understanding (MOU) signed on 11 December 2001. Australia also signed an MOU with Papua New Guinea on 11 October 2001, allowing the construction of a processing centre to accommodate and assess the claims of asylum seekers on Manus Island. The centres were managed by the International Organisation for Migration (IOM).

Under the 'Pacific Solution' unauthorised arrivals at excised places were transferred to the Offshore Processing Centres on Nauru and Manus Island where they were detained while their asylum claims were processed. Claims were not processed under Australian law and claimants had no access to legal assistance or judicial review. Rather claims were processed by Australian immigration officials, and in some cases UNHCR officials in accordance with the criteria of the Refugee Convention. Persons who were found to be owed protection were eventually resettled either in Australia or in a third country (with the emphasis being on trying to find resettlement solutions in a third country in

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53. A Millbank and J Phillips, *Protecting Australia's borders*, Research note, no. 22, 2003–04, Parliamentary Library, Canberra, 2003, viewed 18 December 2008, http://www.aph.gov.au/library/pubs/rn/2003-04/04rn22.htm

preference to Australia). Some asylum seekers were also processed on the excised offshore territory of Christmas Island.

The 'Pacific Solution' was widely criticised by refugee advocacy and human rights groups as being contrary to international refugee law, unjustifiably expensive to implement, and psychologically damaging for detainees.[54]

On 8 February 2008 the 'Pacific Solution' formally ended, as the last 21 asylum seekers detained at the Offshore Processing Centre in Nauru were resettled in Australia. The Rudd Government announced that the centres on Manus and Nauru would no longer be used, and that future unauthorised boat arrivals would be processed on Christmas Island, which would remain excised from Australia's migration zone.[55]

Between 2001 and February 2008 a total of 1637 people had been detained in the Nauru and Manus facilities. Of these, 1153 (70 per cent) were ultimately resettled in Australia or other countries. Of those who were resettled 705 (around 61 per cent) were resettled in Australia.[56]

Temporary Protection Visas

In October 1999, the Howard Government introduced Temporary Protection Visas (TPVs) for asylum seekers who arrived unauthorised and were subsequently assessed by the Immigration Department to be refugees.[57] A TPV was valid for three years, after which time a person's need for protection would be reassessed. Holders of TPVs were provided with access to medical and welfare services, but given only reduced access to settlement services, no access to family reunion, and no travel rights. If a person who held a TPV left Australia their visa could be cancelled. Approximately 11 000 TPVs were issued between 1999 and 2007, and approximately 90 per cent of TPV holders eventually gained permanent visas.[58]

In May 2008 the Rudd Government announced that it would abolish the system of temporary protection.[59] This meant that around 1000 people in Australia on TPVs would be granted permanent protection (provided they met security and character requirements), and from 2008–09 all people

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54. For example, see K Bem, N Field, N Maclellan, S Meyer and T Morris, *A price too high: the cost of Australia's approach to asylum seekers*, A Just Australia and Oxfam Australia, August 2007, viewed 29 April 2009, http://pandora.nla.gov.au/pan/76526/20070910-1523/www.oxfam.org.au/media/files/APriceTooHigh.pdf

55. C Evans (Minister for Immigration and Citizenship), *Last refugees leave Nauru*, media release, Canberra, 8 February 2008, viewed 30 April 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FYUNP6%22

56. C Evans, Last refugees leave Nauru.

57. J Phillips, *Temporary Protection Visas*, Research note, no. 51, 2003–04, Parliamentary Library, Canberra, 2004, viewed 18 December 2008, http://www.aph.gov.au/library/pubs/rn/2003-04/04rn51.htm

58. In an answer to a Question without Notice in the Senate on 15 May 2008, Senator Chris Evans stated that there were '11 000-odd TPVs' granted by the previous government. Also see 'Seeking Asylum', *Insight*, SBS, 19 May 2009.

59. C Evans (Minister for Immigration and Citizenship), *Budget 2008–09: Rudd Government scraps temporary protection visas,* media release, 13 May 2008, viewed 28 April 2009, http://www.minister.immi.gov.au/media/media-releases/2008/ce05-buget-08.htm

found to be refugees would be granted permanent protection. The TPV system was formally ended by amendments to the Migration Regulations on 9 August 2008.

Some, including members of the current Opposition, have attributed the recent increase in the number of unauthorised boat arrivals to the abolition of TPVs (along with the ending of the Pacific Solution).[60] However, the highest numbers of boat arrivals were in the financial year in which TPVs were introduced, and the financial year immediately following (see figures in Appendix A). The Minister for Immigration and Citizenship has argued, along with many refugee advocates and journalists, that the introduction of TPVs was ineffective in reducing the number of unauthorised boat arrivals. They argue that it actually led to an increase in women and children undertaking the risky journey to Australia by boat, as TPVs did not provide family reunification rights (meaning that families could not rely on men travelling to Australia alone and bringing their wives and children out to join them once they had been granted protection):

> … the temporary protection visa regime was introduced in late 1999. Following that there was a small drop-off in arrivals. From December 1999 to November 2010 there were only 2,900 arrivals, as compared with 3,000 before that. So there was a small drop of about 100 to 2,900. From December 2000, a year after its introduction, until November 2001 there were 6,540 boat arrivals in the second year of the operation of the TPV regime. The claim that the TPV introduction halted arrivals is not supported by the evidence. … In fact, in the period after that there was a huge surge. Our figures show that in that period the percentage of women and children went from around 25 per cent to around 40 per cent. We saw more women and children taking the very perilous journey to come to Australia by unlawful boat arrivals.[61]

The Rudd Government has countered the argument that the recent increase in boat arrivals is due to policy changes such as the abolition of TPVs, blaming it instead on 'push factors' which have led to an increase in the numbers of refugees worldwide.[62]

Conclusion

Boat arrival numbers in Australia have fluctuated significantly over the last 30 years in response to global events. Government responses over the years have included measures aimed at ensuring that those arriving by boat are genuine refugees, policies aimed at protecting our borders, including through cooperation with neighbouring countries, and policies aimed at deterring unauthorised boat

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60. For example see J Kerin, 'Turnbull rocks Canberra's boat', *Australian Financial Review*, 21 April 2009, viewed 20 May 2009,
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F5QBT6%22
61. C Evans, Standing Committee on Legal and Constitutional Affairs, Additional Estimates, Immigration and Citizenship portfolio, 24 February 2009, pp. 72–3, viewed 1 June 2009,
http://www.aph.gov.au/hansard/senate/commttee/S11640.pdf
62. For example see A Hayward, 'Govt denies blame for increase in boat people', *The Canberra Times*, 15 April 2009, viewed 20 May 2009,
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FI2AT6%22
and T Arup, 'Increase in boat people predicted', *The Age*, 11 April 2009.

arrivals. The debate in both public and political arenas is likely to continue as governments seek to address the issues.

Appendix A:

Boat arrivals since 1976 by calendar year

Year	Number of Boats	Number of people
1976		111
1977		868
1978		746
1979		304
1980		0
1981		30
1982–88		0
Year	**Number of Boats**	**Number of people (excludes crew)**
1989	1	26
1990	2	198
1991	6	214
1992	6	216
1993	3	81
1994	18	953
1995	7	237
1996	19	660
1997	11	339
1998	17	200
1999	86	3721
2000	51	2939
2001	43	5516
2002	1	1
2003	1	53
2004	1	15
2005	4	11
2006	6	60
2007	5	148
2008	7	161
Year	**Number of Boats**	**Number of people (includes crew)**
2009	61	2849*
2010 (to 20 September 2010)	96	4822

Notes: Boat numbers exclude boats returned from whence they came. ***Includes five deceased at sea 16 April 2009 and 12 deceased at sea 1 November 2009. Arrival figures do not include; 2 arrivals in an 'esky' on 17 January 2009; 4 on Deliverance Island with no boat on 29 April 2009; and 78 on board Oceanic Viking intercepted in Indonesian waters in November 2009.

Sources: **1976-1988:** K Betts, 'Boatpeople and public opinion in Australia', *People and place*, vol. 9, no. 4, 2001, p. 34. Numbers of boats and crew members not specified.
1989–2008: DIAC advice provided to the Parliamentary Library on 22 June 2009.
2009–2010: figures compiled by the authors from ministerial press releases.

Boat arrivals by financial year since 1989

Year	Number of boats	Number of people
1989–90	3	224
1990–91	5	158
1991–92	3	78
1992–93	4	194
1993–94	6	194
1994–95	21	1071
1995–96	14	589
1996–97	13	365
1997–98	13	157
1998–99	42	921
1999–00	75	4175
2000–01	54	4137
2001–02	19	3039
2002–03	0	0
2003–04	3	82
2004–05	0	0
2005–06	8	61
2006–07	4	133
2007–08	3	25
Year	**Number of boats**	**Number of people (includes crew)**
2008–09	23	1033*
2009–10	118	5609*
2010–11 (to 20 September 2010)	23	1208

Notes: Data from 2001–02 onwards includes arrivals at both excised and non-excised places. *Includes the 5 people killed following an explosion on board a boat on 16 April 2009, but does not include the 2 men found drifting in an esky in the Torres Strait on 17 January 2009, or the 4 people found on Deliverance Island with no sign of a boat on 29 April 2009. 2009–10 figures include the 12 people who died when a boat sank on 1 November 2009, but do not include the 78 asylum seekers on board the Oceanic Viking intercepted in Indonesian waters in October 2009 or the 5 who reportedly drowned before a boat was rescued and towed to Cocos Islands in May 2010.

Sources: **1989–90 to 2000–01**: DIMIA, *Unauthorised arrivals by air and sea*, fact sheet no. 73, October 2004. Numbers of crew members not specified.
2001–02 to 2007–08: Senate Legal and Constitutional Affairs Committee, Immigration Portfolio, Additional Estimates 2008–09, 24 February 2009, pp. 48–51; and Answers to Questions on Notice, Question no. 16. Numbers of crew members not specified.
2008–09 to 2010–11: figures compiled by the authors from ministerial press releases and press reports. Note: not all boat arrivals are reported by the media and not all may be subject to ministerial press releases. As a result, there may be discrepancies with DIAC data by calendar year in the table above. For example, according to DIAC, 16 boats had arrived in 2009 as at 21 June, but only 14 boats were reported in ministerial press releases.

These figures are represented in graph format below:

Boat arrivals by calendar year 1979 to 2009 and financial year 1989-90 to 2009-10
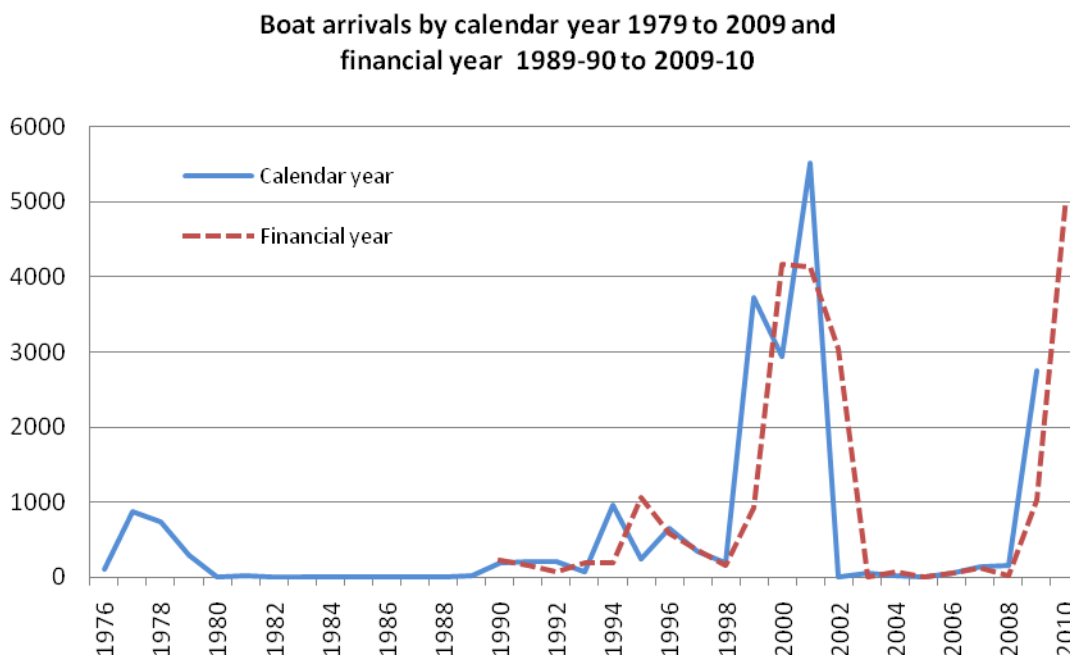
Notes: Several chronologies of irregular maritime arrivals since August 2008 were provided by DIAC in answers to questions taken in Senate Estimates in 2009 and 2010. The chronologies vary (sometimes providing crew members and sometimes not). As a result, they do not tally exactly with the figures above sourced from ministerial press releases (that usually include crew members). The chronologies are available on the Senate Legal and Constitutional Affairs Committee Estimates (Immigration Portfolio) webpage:

– 20 October 2009: answers to QON numbers 50 and 86
– 9 February 2010: tabled documents, item number 5 **(note: includes data on country of origin since 2008)** and answer to QON number 49
– May 2010: tabled documents, item no. 4.

Appendix B: Glossary

Department of Immigration and Citizenship (DIAC) and United Nations High Commissioner for Refugees (UNHCR) definitions

Asylum seekers	People who have left their country of origin, applied for recognition as a refugee in another country, and are awaiting a decision on their application.[63] Each year people already in Australia claim asylum and make applications for protection (refugee status). These include people who arrived 'lawfully' with a valid visa and people who have arrived 'unlawfully' in Australia by sea or air without a valid visa. If asylum seekers are found to be owed protection by Australia (having met the UNHCR definition of a refugee, as defined in the *1951 Convention and 1967 Protocol relating to the Status of Refugees*) they will be granted a permanent Protection visa, provided they meet all health and character requirements.[64]
'Boat people'	A term used in the media and elsewhere to describe asylum seekers who arrive by boat or attempt to arrive by boat without authority to enter Australia. DIAC uses the term 'unauthorised boat arrivals' or 'unlawful boat arrivals'.[65]
Displaced people	People who flee their homes to escape conflict, violence, human rights abuses or other disasters. An Internally Displaced Person (IDP) may have been forced to flee their home for the same reasons as a refugee, but has not crossed an internationally recognised border. Many IDPs are in refugee-like situations and face the same problems as refugees.[66]
Excised offshore entry	In 2001 the Government introduced legislation which excluded some of Australia's territory from the migration zone. These measures prohibit people who arrive at excised places from making a valid visa application. These excised offshore places include the Ashmore and Cartier Islands, Christmas Island and Cocos (Keeling) Islands. However, the Minister for Immigration and Citizenship has a discretionary power to allow a valid

63. UNHCR, *Definitions and obligations*, viewed 11 June 2009, http://www.unhcr.org.au/basicdef.shtml

64. DIAC, *Seeking asylum within Australia*, fact sheet no. 61, viewed 11 June 2009, http://www.immi.gov.au/media/fact-sheets/61asylum.htm

65. DIAC, *Processing unlawful boat arrivals*, fact sheet no. 75, viewed 11 June 2009, http://www.immi.gov.au/media/fact-sheets/75processing-unlawful-boat-arrivals.htm

66. UNHCR

	application to be made by a person who arrives on an excised offshore place.[67]
Humanitarian program	Australia's Immigration Program has two streams; the Migration Program for skilled and family migrants and the Humanitarian Program for refugees. The Humanitarian Program grants both offshore and onshore places to those deemed to be in need of protection.[68]
Offshore resettlement	Australia's Humanitarian Program grants offshore protection visas for the resettlement of people in humanitarian need for whom other durable solutions cannot be found. The offshore resettlement component comprises two categories of permanent visa**; Refugee** (which includes the Refugee, In–country Special Humanitarian, Emergency Rescue and Woman at Risk sub–classes); and **Special Humanitarian Program (SHP)** for people outside their home country who are subject to substantial discrimination amounting to gross violation of human rights in their home country. A proposer who is an Australian citizen, permanent resident or eligible New Zealand citizen, or an organisation that is based in Australia, must support applications for entry under the SHP. [69]
Onshore protection	Australia's Humanitarian Program also includes an onshore component for those people already in Australia seeking Australia's protection.[70]
Refugees	The 1951 Convention Relating to the Status of Refugees 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. |

67. DIAC, *New humanitarian visa system*, fact sheet no. 65, viewed 11 June 2009, http://www.immi.gov.au/media/fact-sheets/65humanitarian.htm
68. DIAC, *Australia's refugee and humanitarian program*, fact sheet no. 60, viewed 11 June 2009, http://www.immi.gov.au/media/fact-sheets/60refugee.htm
69. DIAC, Australia's refugee and humanitarian program.
70. DIAC, Australia's refugee and humanitarian program.

	This is the definition used by Australia when assessing claims for protection. The majority of applicants who are considered for resettlement in Australia as refugees are identified and referred to Australia by the UNHCR.[71]
Unauthorised arrivals	Any person arriving or attempting to arrive without authorisation or a valid visa.
Unlawful non-citizen	An unlawful non-citizen is a national from another country who does not have the right to be in Australia; that is they do not hold a valid visa. The majority of unlawful non-citizens in Australia at any given time have either overstayed the visa issued to them or are people who have had their visa cancelled. Some unlawful non-citizens will have entered Australia without a visa.[72]

71. DIAC, Australia's refugee and humanitarian program.
72. DIAC, *Overstayers and other unlawful non-citizens*, fact sheet no. 86, viewed 11 June 2009, http://www.immi.gov.au/media/fact-sheets/86overstayers-and-other-unlawful-non-citizens.htm

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