

Asylum Seekers and Refugees

The Facts

General Note

In delivering the content of this resource sensitively, please be mindful that there may be people in your school or broader community who have experiences of coming to Australia as refugees or asylum seekers.

This publication is produced by Asylum Insight. Asylum Insight provides facts and analysis on Australian asylum policy, within an international context.

Asylum Insight is an organisation that was founded in Australia. We would like to acknowledge the Traditional Owners of this land.

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EDITORIAL

Rahila Haidary



It is worthwhile questioning yourself on what your main sources of information and knowledge are. Where do you get your facts and statistics? Where does your source of information – the media – get their information? How do you know if it has been delivered to you accurately? If not the media, who and what should you trust?

Well, the pressure is real and you have to find answers. As a Political Science and Law student who has lived the experience of a refugee and live the life of a privileged Australian now, I have a few things to mention.

Firstly, be very diverse about your sources. I know often we are locked within our little worlds. The trick is to try and reach out to as many websites, newspapers and channels as you can.

Secondly, do not get blended with the popular ideas and beliefs. What the majority thinks is not always correct.

Thirdly and most importantly, go beyond your comfort zone and be real. Apply the rule of diversity in this and meet people. It is amazingly important as a person to be receptive in order to build your knowledge.

This publication by Asylum Insight aims to provide balanced, factual information about what it means to be a refugee, and about the legal frameworks and policies that relate to refugees in Australia and around the world. It has taken into account multiple different sources of information. I hope that you find it useful in finding out more about this issue. However, the best way to find out more about refugees is to meet refugees and hear their stories.

– Rahila

RAHILA'S BIOGRAPHY

Rahila Haidary was born in Oruzgan district in Afghanistan. She belongs to the Hazara minority ethnic group, who have been the victims of systemic discrimination and genocide since the 16th century. Growing up under the Taliban, she only has horrific memories from her childhood. She fled Afghanistan with her parents at the age of six and lived in Pakistan. In 2009 her father took the boat journey to Australia, and in 2011 the rest of her family joined him there.

Since moving to Australia, Rahila successfully completed high school, and is now studying a Bachelor of Arts at the University of Western Australia and working as a professional interpreter. She has been a UNICEF Australia Youth Ambassador. She believes in equality and that everyone is entitled to their basic human rights, and will continue to advocate and fight for human rights.



What is seeking asylum?

AN OVERVIEW OF FORCED DISPLACEMENT AROUND THE WORLD

What does it mean to be an asylum seeker or a refugee, and what kinds of circumstances do asylum seekers and refugees come from?

This section explains:

- Some important definitions, including the distinction between 'asylum seeker' and 'refugee';

- The current circumstances in the countries that many asylum seekers and refugees come from; and
- Possible solutions for refugees in terms of their ongoing safety and protection.



DEFINITIONS

Migrant *Refugee* *Asylum Seeker* *IDP*

The world we live in is highly globalised. One result of this is that people often move from place to place around the world. However, sometimes this movement is voluntary, and sometimes it is forced.

Here are the definitions of four key terms that describe why people move: 'migrant', 'refugee' and 'asylum seeker'. As you read through, think about which term/s relate to someone who has moved voluntarily, and which relate to someone who has been forced to move from their country of origin.

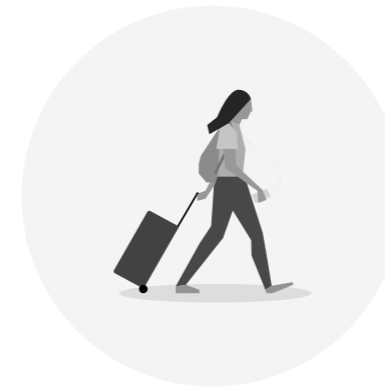


Fig. 1

A **migrant** is someone who voluntarily chooses to move to a different country. Usually this would be to improve their lives by finding work, accessing education, reuniting with family, or for other reasons.

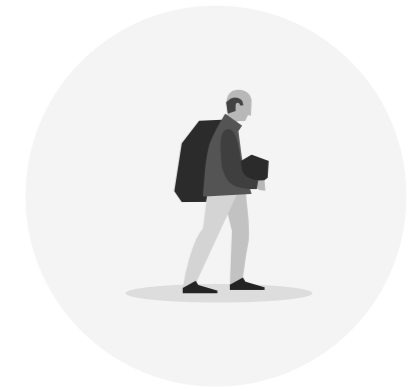


Fig. 2

A **refugee** is someone who is forced to move to a different country due to a fear of being persecuted in their home country (in other words, a fear of being seriously harmed or oppressed). There is a very specific legal definition of what a refugee is – we will come back to this in the 'International legal framework' section.

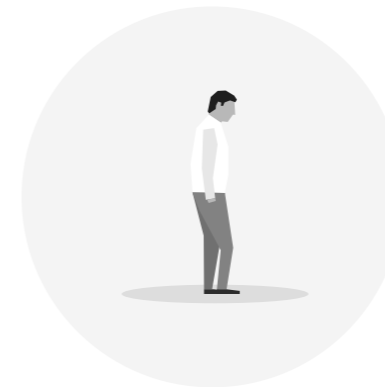


Fig. 3

An **asylum seeker** is someone who claims that they are a refugee, but whose claim has not been decided yet. In other words, they say they have had to move to a different country because they fear persecution, but an official has not yet checked that this is true.



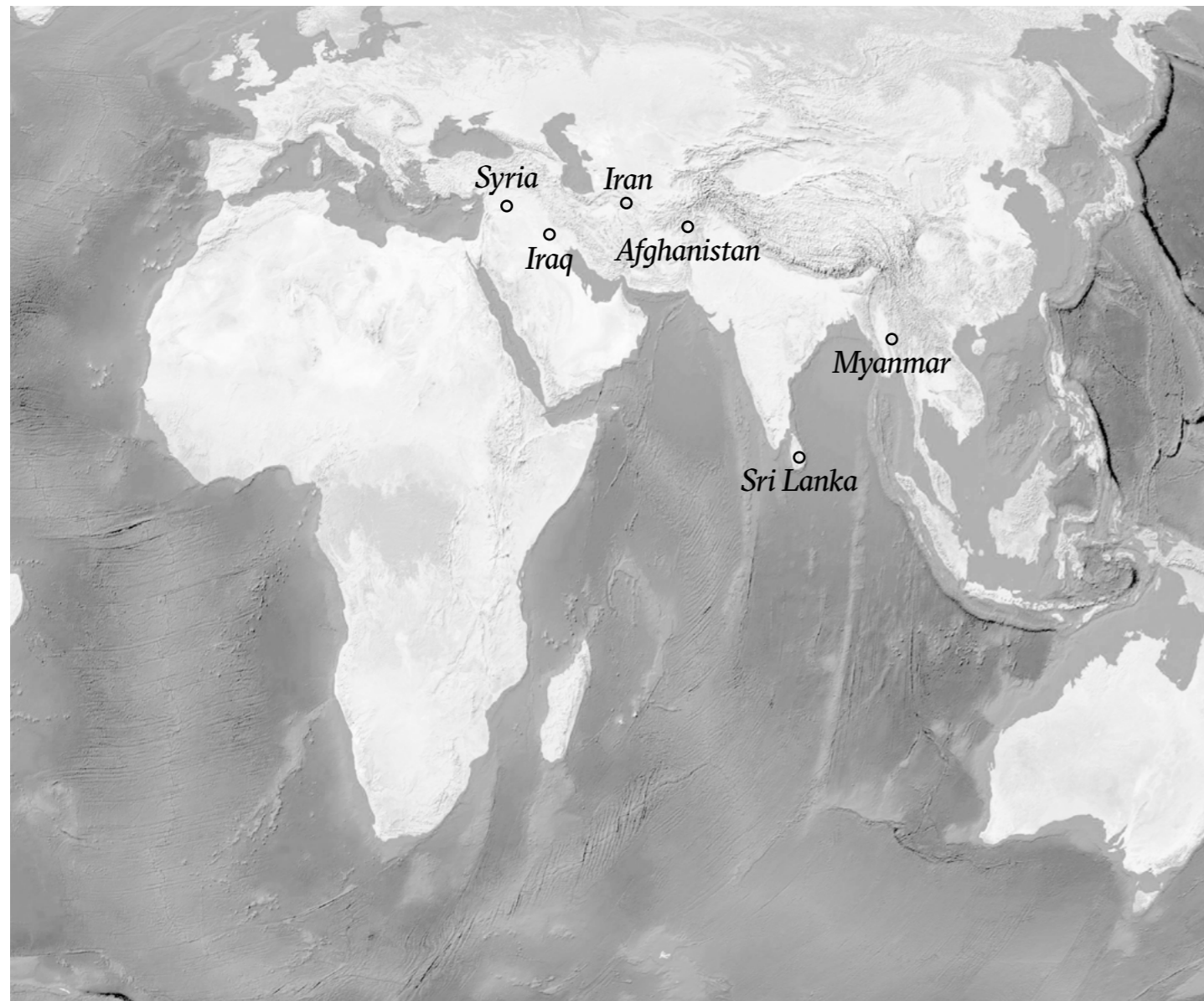
Fig. 4

An **internally displaced person (IDP)** is both similar to and different from a refugee. Similarly to a refugee, an IDP has been forced to move from their home. However, in contrast to a refugee, they remain within their own country's borders.

WHERE DO ASYLUM SEEKERS COME FROM?

We have established that a refugee is someone who is forced to move to a different country due to a fear of being persecuted, and that an asylum seeker is someone who claims to be a refugee

but who has not yet been determined as a refugee by authorities. Our next question, then, is: Where do asylum seekers and refugees come from, and what is happening in those countries to force them to move?



Most asylum seekers and refugees who are attempting to seek protection in Australia have come from the following countries:

Afghanistan

Iran

Iraq

Syria

Sri Lanka

Myanmar

These countries are called 'source countries' or 'countries of origin'. We will outline the broad circumstances in each of these source countries one by one.

Note that while the majority of refugees coming to Australia are from these countries, there are many more asylum seekers seeking safety from across Africa, South and Central America and the Middle East.



Afghanistan

There has been more than 30 years of conflict and instability in Afghanistan. It has been the top country of origin for refugees worldwide over this time. By 1998, the Taliban had gained control of most of Afghanistan. The Taliban is a Sunni Islamic fundamentalist political group, which imposed severe restrictions on women's activities, education, and social and cultural

life. As a result, many Afghans fled their country at this time. In 2001, the USA and its allies invaded Afghanistan, which caused many more people to flee the country. There are widespread human rights violations in Afghanistan, including significant discrimination against the Shia Hazara people.



Iran

Iran is led by a theocracy (a form of government in which God is considered to be the supreme ruler). The country is widely criticised for human rights violations, including the ongoing execution of homosexuals, underage criminal offenders, and people who disagree with the government.



Iraq

Iraq has a long history of security, political and economic challenges. In 2003, the United States and its allies invaded Iraq. These troops withdrew in 2011, but Iraq has remained a dangerous place since this time. Bombings and other attacks are common. Asylum seekers flee Iraq due to fears of racial, religious and political persecution, including from ISIS. Human rights conditions in Iraq are poor, particularly for prisoners, journalists, activists, women and girls.



Syria

Syria is home to a diverse range of ethnic and religious groups. Sunni Muslims make up 74% of the population. There are also Alawi Muslims, Christians, Iraqi refugees, and Kurds. The Assad family, who are Alawi Muslims, has ruled Syria since 1970. From early 2011 to mid-2012, there were demonstrations in Syria protesting that the Assad regime had not delivered economic or political reform. These demonstrations were forcefully repressed by the Assad regime. This led to conflicts between the regime and its opponents. By 2012, these conflicts escalated into a civil war with

Sunni rebels opposing the Alawite-leaning regime. By 2013, the ISIS terrorist group emerged in Syria and capitalised on the conflict by gaining control of much of the northern half of the country.

All sides of the conflict have allegedly used violent means to gain control over territory. Since the war began, around 250,000 people have been killed. Over half of Syria's population of 22 million is currently displaced inside or outside the country, and Syria has become the largest source country of refugees in the world.



Sri Lanka

Sri Lanka is home to various ethnic groups. The largest group is the Sinhalese, followed by Sri Lankan Tamils and Sri Lankan Muslims. In 1983, a civil war began between the Sri Lankan government and a militant group called the Liberation Tigers of Tamil Eelam (LTTE). The LTTE aimed

to create an independent state for Tamil people. This war lasted more than 26 years, and both sides committed violations of international law. After the war, there have been ongoing issues, including abuses against suspected LTTE supporters.



Myanmar

Myanmar is one of Asia's poorest countries. The Burman people are the largest and most dominant group in the country. This group's dominance has led to tensions with other ethnic groups. These include the Karen, Shan, Rakhine, Rohingya and Kachin people. The current government has

discriminated against Rohingya Muslims in the Rakhine state. Rohingya Muslims have not been granted citizenship and lack basic rights. The refugee population from Myanmar was estimated at 745,000 by the end of 2018.

POSSIBLE SOLUTIONS FOR REFUGEES

Now that you know how to define 'asylum seekers' and 'refugees' and understand some of the circumstances that these people are coming from, we will now consider: What are the best possible

solutions for refugees to ensure their ongoing safety and protection? The ultimate aim is to find solutions that are long lasting – we call these 'durable solutions'. There are three possible durable solutions:

Voluntary Repatriation

This is when refugees choose to return home (to their country of origin) once it is safe to do so. This is the most common solution and the one preferred by most refugees.

Challenges with this solution: As indicated in the 'Where do asylum seekers come from?' section, the circumstances in refugees' home countries are almost always very complex and often last a long time, so it is difficult to know that a refugee will be safe if they return home.

Local Integration

When refugees flee from their homes, they often find themselves in countries near to (or sometimes far from) their source countries. We call these countries 'host countries'. 'Local integration' is when host countries permit refugees to become permanent members of the community.

Challenges with this solution: In order for refugees to successfully integrate into a host country, the host country needs to have the capacity to support refugees, both economically and socially. This is often difficult, as host countries tend to be less developed countries.

Resettlement

This is when other countries (not source countries or host countries) agree to allow refugees to live within their communities. This allows countries around the world to share responsibility for protecting refugees.

Challenges with this solution: There are simply not enough countries offering enough places to accommodate the number of refugees who are in need of resettlement. For example, in 2018, around 30 countries offered a total of 56,000 resettlement places, but there were approximately 1.4 million refugees around the world who needed to be resettled. Australia's government has pledged that by 2018-19, Australia will offer 18,750 resettlement places.



What laws exist to manage these issues?

INTERNATIONAL AND AUSTRALIAN LEGAL FRAMEWORKS

Hopefully you now feel confident in your understanding of who asylum seekers and refugees are, where these people are coming from and how they might hope to resolve their situations. We now move into the legal realm, to examine what existing laws say about asylum seekers. For example, are people legally allowed to seek asylum? And what do the laws say about how a country should respond if an asylum seeker turns up within its borders, asking for protection?

Figuring out the answers to these legal questions is complicated, as there are two different categories of laws to consider: international laws and domestic laws. Our first step, then, is to understand the distinction between these two types of laws. This section will then go on to explain what international laws say about seeking asylum and what Australian domestic laws say about seeking asylum

INTERNATIONAL LAW
VS DOMESTIC LAW

Domestic Laws

Domestic laws are made by the legislature¹ of a particular country (e.g. Australia's domestic laws are made by Australia's federal and state parliaments). In general, these laws apply to people within that country.

If a person breaks a domestic law, the justice system of the relevant country can impose serious consequences (such as fines, jail time etc).

Examples:

- Crimes Act 1958 (Vic)
- Children, Youth and Families Act 2005 (Vic)
- Migration Act 1958 (Cth)

International Laws

International laws are made when different countries make formal agreements ('treaties') with each other. In general, they apply to the governments of the countries that make these agreements.

If a government breaks an international law, it can be very difficult to impose consequences on that government (for example, there is no international police force to arrest government leaders for breaking international laws).

Examples:

- The International Covenant on Civil and Political Rights
- The Convention against Torture
- The Refugee Convention

It is possible for a country's domestic laws to be **consistent** with OR to **contradict** international laws that its government has agreed to. If a country's domestic laws contradict international laws that its government has agreed to, it is more likely that the domestic laws are the ones that will actually be followed or enforced.


The Universal Declaration of Human Rights

What do international laws say about seeking asylum? There are quite a few international laws that are relevant to asylum seekers, but we will discuss two key ones. These are:

- The Universal Declaration of Human Rights (the UDHR), and
- The Convention and Protocol Relating to the Status of Refugees (the Refugee Convention).

The Universal Declaration of Human Rights is a declaration that was adopted by the United Nations in 1948. It is not the same as a treaty – that is, countries are not bound to follow it. However, it is very influential as a global statement on the rights of individuals.

Article 14 of the UDHR states: ‘Everyone has the right to seek and to enjoy in other countries asylum from persecution’. This Article indicates that every human is clearly allowed to seek asylum if they are facing persecution (i.e. if they are being seriously harassed or oppressed).



*“Everyone
has the right to
seek and to enjoy
in other countries
asylum from
persecution”*

ARTICLE 14
UNIVERSAL DECLARATION
OF HUMAN RIGHTS

The Refugee Convention

The Refugee Convention is a treaty that many countries have signed up to. As of September 2016, there are 146 countries that have agreed to follow the Refugee

Convention. Australia was one of the first countries to accede¹ to the Refugee Convention: it did so in 1954.

Article 1A

This Article gives a specific definition of a 'refugee'. It states that in order to qualify as a refugee, a person has to meet the following criteria:

- Well-founded fear of persecution: They must have a fear of being persecuted. This fear must be 'well-founded' – in other words, it has to be a justified fear.
- Five grounds for persecution: The persecution that the person fears must be related to at least one of the following five things: their race, religion, nationality, membership of a particular social group, or political opinion. In other words, they must fear that they may be persecuted because they belong to a particular race, follow a particular religion, hold a particular political opinion, etc. Note: This means that a person who fears being persecuted for some other reason (for example, because of economic status) may not qualify as a refugee.
- Alienage: In addition, the person must be physically outside their home country (the country of their nationality), and unable to be protected by that country. **Note:** This means that an internally displaced person does not qualify as a refugee, because despite the fact that they have been forced to move from their home, they are not physically outside their home country's borders.

Article 31

This Article allows refugees not to be punished if they cross a border illegally or without authorisation, provided they present themselves to authorities without delay and show good cause for their illegal entry.

Article 33

This Article establishes the principle of 'non-refoulement'. 'Refoulement' is a French term which means to send back or turn around. The principle of non-refoulement states that a refugee must not be returned to a place where they may face persecution.

As you can see, the Refugee Convention does not specifically state that all humans have a right to seek asylum (unlike the UDHR). However, if a country agrees to follow the Refugee Convention, then it agrees not to send any person who meets the definition of a refugee back to a place where they may be persecuted.

INTERNATIONAL
LEGAL FRAMEWORK

UNHCR

The Refugee Convention also does something else important: it sets up the Office of the United Nations High Commissioner for Refugees (UNHCR). The UNHCR is an international agency whose job it is 'to safeguard the rights and wellbeing of refugees'. This agency has the following important roles:

- It monitors the Refugee Convention – that is, it checks that countries that have acceded to the Convention are actually following what it says;
- It conducts the 'refugee status determination' (RSD) process to assess whether people meet the definition of a refugee (if a country is unable to conduct this process themselves);
- It provides humanitarian aid and practical assistance in places where there are refugee crises; and
- It assists countries to find durable solutions to support refugees to rebuild their lives.



AUSTRALIAN
LEGAL FRAMEWORK

Migration Act

Now that you understand the international legal framework for seeking asylum, it is time to consider what Australia's domestic laws say about the issue. Remember: It is possible for a country's domestic laws to be **consistent** with OR to **contradict** international laws that its government has

agreed to. As you read about Australia's legal framework for seeking asylum, think about:

- the ways in which it is consistent with the Refugee Convention; and
- the ways in which it could be said to contradict the Refugee Convention.

The Migration Act 1958 (Cth) is the most important law in Australia's legal framework about seeking asylum. Its most relevant section is as follows:

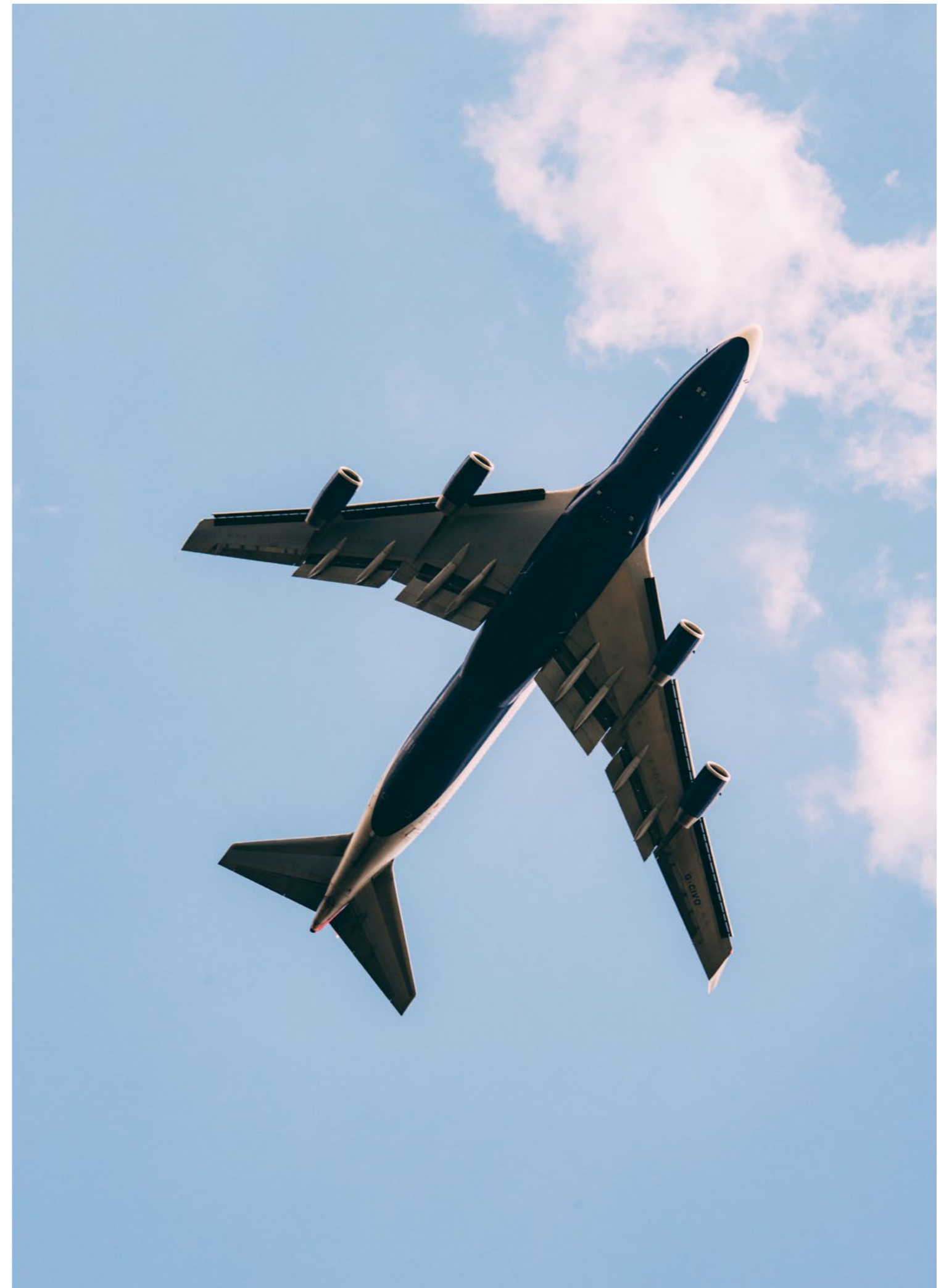
Section 36

This section explains when a person can be granted a 'protection visa' by the Australian government.

- What is a protection visa? A 'visa' is official permission to be in a country. A protection visa is a specific type of visa which allows the holder to remain in Australia because they are in need of protection (e.g. because they are a refugee). If a person is granted a permanent protection visa, they become a permanent resident of Australia and have access to a range of associated benefits. The fact that the Australian government grants protection visas means that they do not 'refoule' the holders of these visas to places where they may face persecution.

- When can a person be granted a protection visa? A person may be eligible for a protection visa if:
 - they are in Australia and meet the definition of a refugee as per Article 1A of the Refugee Convention, and
 - they arrived in Australia with a valid visa.

Note: This means that if a person is in Australia and meets the definition of a refugee but did not arrive in Australia with a valid visa, they are not eligible for a protection visa. For example, most asylum seekers who arrive in Australia by boat do not have valid visas, and therefore they are not eligible for protection visas.



AUSTRALIAN
LEGAL FRAMEWORK

Australia also has several national agencies that provide some of the same services for asylum seekers and refugees that UNHCR provides on the international level.

Border Protection

The Department of Home Affairs is a department of the Australian government. It conducts the refugee status determination (RSD) process for asylum seekers who arrive in Australia.

Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) is an organisation that investigates breaches of human rights in Australia. It focuses on stopping discrimination based on race, sex, age and disability. It also plays an important role in protecting the rights of asylum seekers, refugees and people in immigration detention.

The AHRC works to protect the human rights of these people in the following ways:

- by raising public awareness of their rights;
- by investigating complaints about alleged breaches of their rights; and
- by making suggestions to the government about proposed laws affecting their rights.

Refugee Council of Australia

The Refugee Council of Australia (RCOA) is a non-profit national organisation for refugees and the organisations and individuals who support them.

RCOA focuses on:

- contributing to and making suggestions about Australia's laws and policies affecting refugees and asylum seekers;
- advocating for asylum seekers and refugees; and
- raising public awareness and providing community education about asylum seekers and refugees.

There are many other community and advocacy organisations that provide support and services to asylum seekers and refugees or advocate for their needs.



How is Australia responding?

ASYLUM POLICY IN AUSTRALIA

We have now explained what Australian laws currently say about asylum seekers. Basically, if an asylum seeker is in Australia and meets the definition of a refugee, they can apply for a protection visa to remain in Australia permanently. However, many asylum seekers do not arrive in Australia with valid visas (for example, many asylum seekers arrive in Australia by boat). These people

are not allowed to apply for protection visas under Australia's domestic laws.

We will now turn to the following questions: Have Australia's laws about asylum seekers always been this way? How have they changed over the years, and why? And how would Australia's current laws affect you if you were an asylum seeker searching for safety in Australia in 2019?

AUSTRALIAN ASYLUM POLICY

FROM 1901 TO TODAY: A TIMELINE

1901

At Federation (1901), persecuted people were able to settle in Australia. However, at this time, the Immigration Restriction Act 1901 (Cth) was in operation. This law excluded any non-white people from immigrating to Australia. This was known as the 'White Australia policy'. So persecuted people were only able to settle in Australia if they were white.

Around 20,000 refugees settled in Australia between Federation and 1948.



The Australian Natives' Association badge (1910) ¹



Polish refugees during the First World War (1914) ²

1940

Between 1947 and 1954, over 170,000 European refugees were resettled in Australia.

At this time, Australia resettled refugees because it helped Australia (for example, refugees could work certain jobs which were difficult to fill), not only because Australia was concerned about helping refugees.



Belgian refugees during the Second World War (1940) ³

1950

Australia acceded to the Refugee Convention in 1954. At this time, the Refugee Convention was limited so it applied only to European refugees from events before 1951.



Korean refugees in Haengju, South Korea (1951) ⁴

¹ Source: Australian Natives' Association
² Source: Imperial War Museum
³ Photo by Julien Bryan
⁴ Source: U.S. National Archives and Records Administration

1960

In the late 1960s and early 1970s, the White Australia policy was dismantled. More opportunities for migration to Australia were opened up to people from around the world. This included the 'humanitarian migration stream'. Through this stream, Australia offered visas to refugees and other people who needed help.

1970

In 1973, Australia agreed to the 1967 Protocol Relating to the Status of Refugees. This is a treaty added on to the Refugee Convention. If a country agrees to the Protocol, it agrees to protect refugees from any country and any time period, not just refugees from Europe before 1951.

1975

The Vietnam War caused many people to become refugees. Between 1975 and 1981, Australia afforded protection to 51,780 of these refugees. Many of these refugees were living in source countries and transit countries, but 2059 came to Australia by boat. Therefore, Australia afforded protection to these refugees in two different ways: through an 'offshore' process and an 'onshore' process:

- Through the offshore process, the Australian government worked with UNHCR to identify refugees living in source countries and host countries and offered them visas to settle in Australia. The Australian government introduced a formal offshore refugee resettlement program in 1977.

- Through the onshore process, representatives of the Australian government met with refugees who had arrived by boat and interviewed them to see if they met the definition of a refugee. If they did meet this definition, they were offered visas to settle in Australia. The Australian government formalised this process by introducing Australia's first national refugee policy.

Ever since the end of the Vietnam War, asylum seekers fleeing conflict and persecution have been arriving in Australia by boat. Most asylum seekers who arrive by boat arrive without valid visas.



Vietnamese refugees flee across the Perfume River in Hue before the bridge collapses (1968) ¹

1980

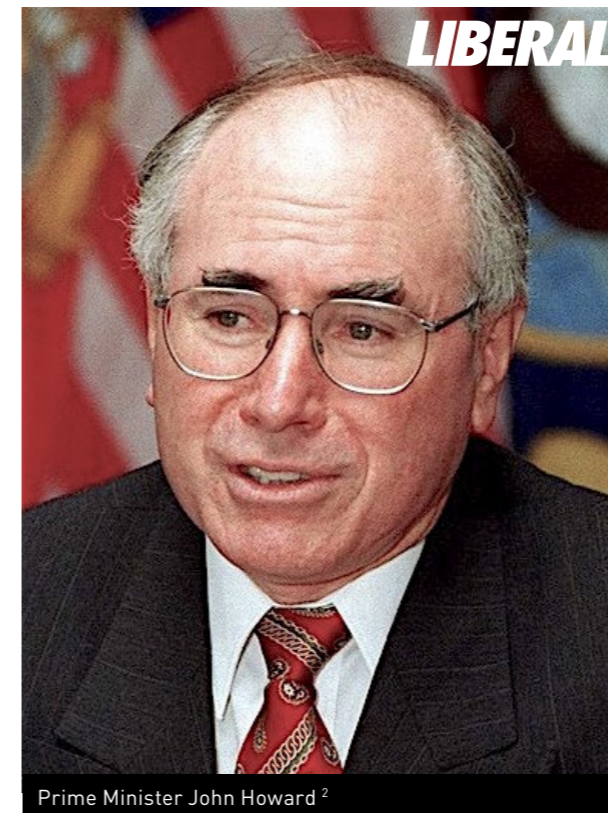
In 1989, a law was passed which changed the way that asylum seekers arriving by boat were processed. There was an introduction of **discretionary detention** for asylum seekers who arrived onshore without valid visas. This meant that it was possible that these asylum seekers could be detained (i.e. kept in custody) while their refugee status was being determined.

1990

In 1992, Prime Minister Paul Keating's Labor government passed a law that introduced **mandatory detention** for asylum seekers who arrived onshore without valid visas. This meant that these asylum seekers had to be detained while their refugee status was being determined.



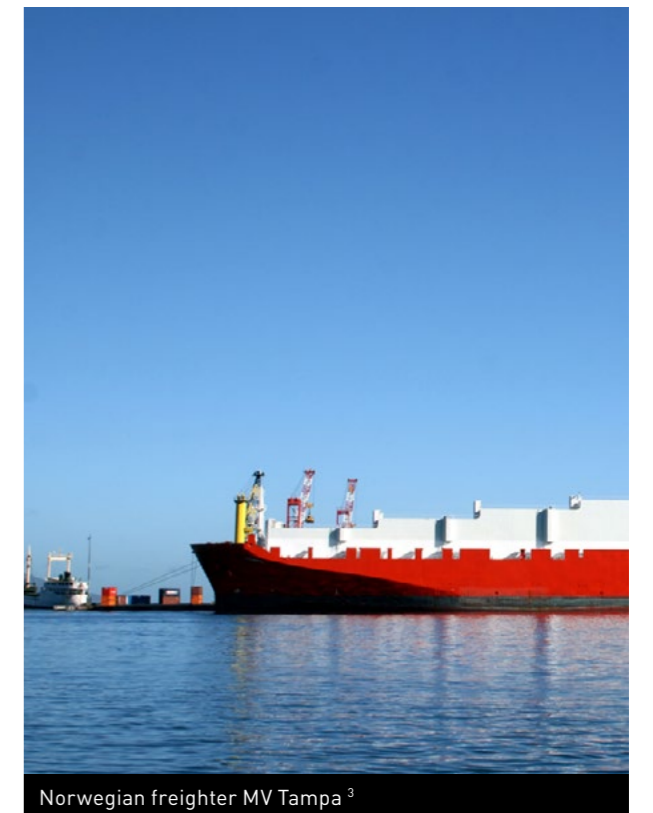
In 1999, Prime Minister John Howard's Liberal government created a new type of visa: the **Temporary Protection Visa (TPV)**. This was now the only visa that could be given to asylum seekers who arrived onshore without valid visas. TPVs lasted for three years, as opposed to protection visas, which offered permanent residency.



2000

At the turn of the century, several incidents occurred which led to more significant changes in the way asylum seekers arriving by boat were processed. For example:

- In August 2001, a Norwegian freighter ship called the 'MV Tampa' rescued 430 asylum seekers from a broken down boat heading for Christmas Island. The asylum seekers requested to be taken to Australia; however, the Howard government refused the ship permission to disembark the asylum seekers in Australia.
- In October 2001, an Indonesian fishing boat carrying asylum seekers sank on its way to Australia. 353 of its passengers drowned.



¹ Source: White House Photograph Office
² Photo by Helene C. Stikkel
³ Photo by Rémi Jouan

2005

In response to such incidents, in 2001 the Australian Parliament passed laws to set up the **Pacific Solution**. The purpose of the Pacific Solution was to discourage asylum seekers from traveling to Australia by boat. The new laws:

- Excised (removed) certain territories (e.g. islands to the north and east of Australia) from Australia's 'migration zone'. This basically meant that if asylum seekers arrived at certain islands, they could not legally claim to have arrived onshore in Australia, even though the island did actually belong to Australia.
- Allowed for asylum seekers who arrived in Australia onshore to be detained in 'offshore' locations. (In this context, 'offshore' means 'in countries other than Australia'. This process is different from the 'offshore refugee resettlement program'.) This meant that asylum seekers who arrived by boat and without valid visas were detained not in Australia but at Manus Island (Papua New Guinea) and Nauru while their refugee status was being determined. These asylum seekers could still ultimately receive visas to come to Australia.

In 2001, John Howard's Liberal government introduced a **boat turnback** policy. Under this policy, the Australian Navy could intercept asylum seeker boats at sea, and, if they were seaworthy, tow them back to their point of departure (which was usually Indonesia).



The offshore refugee resettlement program continued since it was formalised in 1977. Between 2001 and 2008, approximately 90,589 people received visas to settle in Australia through this program.

In 2008, Prime Minister Kevin Rudd's Labor government dismantled many of the asylum seeker policies that the Liberal government had established. For example, it:

- Took apart the Pacific Solution – detention centres on Manus Island and Nauru closed and the government went back to processing onshore asylum seeker arrivals in Australia (including on Christmas Island, which is part of Australia's territory);
- Abolished Temporary Protection Visas; and
- Discontinued the boat turnback policy.



2010

From 2008 to 2012, the number of asylum seekers arriving in Australia by boat increased dramatically. During approximately the same period, around 610 asylum seekers died trying to reach Australia by boat. In August 2012, Prime Minister Julia Gillard's Labor government passed laws that allowed asylum seekers arriving by boat to be transferred to 'regional processing countries' while their refugee status is determined. The chosen regional processing countries were Papua New Guinea and Nauru. This essentially reinstated the Pacific Solution, but the Gillard Government intended this to only be temporary. The asylum seekers detained in PNG and Nauru could still ultimately receive Australian visas.

In 2013, Kevin Rudd became Prime Minister again. In July 2013, his Labor government announced that asylum seekers who arrive by boat without valid visas would no longer ever be settled in Australia. The government made arrangements with Papua New Guinea and Nauru. Under these arrangements, asylum seekers who arrived in Australia by boat without valid visas would be:

- Sent to Manus Island (PNG) or Nauru to have their refugee status determined; and
- Settled in PNG or Nauru – not Australia – if they were found to meet the definition of a refugee.



Prime Minister Julia Gillard ¹



Locations of Manus Island (left) and Nauru (right)

2019

In September 2013, the Liberal Party won government and Tony Abbott became Prime Minister. The Abbott Government established 'Operation Sovereign Borders', a military-led policy that aims to completely stop asylum seekers from arriving in Australia by boat. Under this policy, the offshore processing and settlement arrangements with PNG and Nauru continued, and a boat turnback policy was reinstated. The Liberal government has been continuing Operation Sovereign Borders since September 2015.

Asylum seekers remain a hotly contested issue in Australian politics and society. The numbers of asylum seekers and refugees in offshore detention on Nauru and Manus Island are reducing, but people remain there indefinitely. There have been cases of deaths and severe illness in detention. In 2019, Australia's federal parliament passed the 'Medevac' bill, which allows doctors to recommend seriously ill asylum seekers and refugees be transferred from Nauru and Manus Island for medical treatment in Australia.

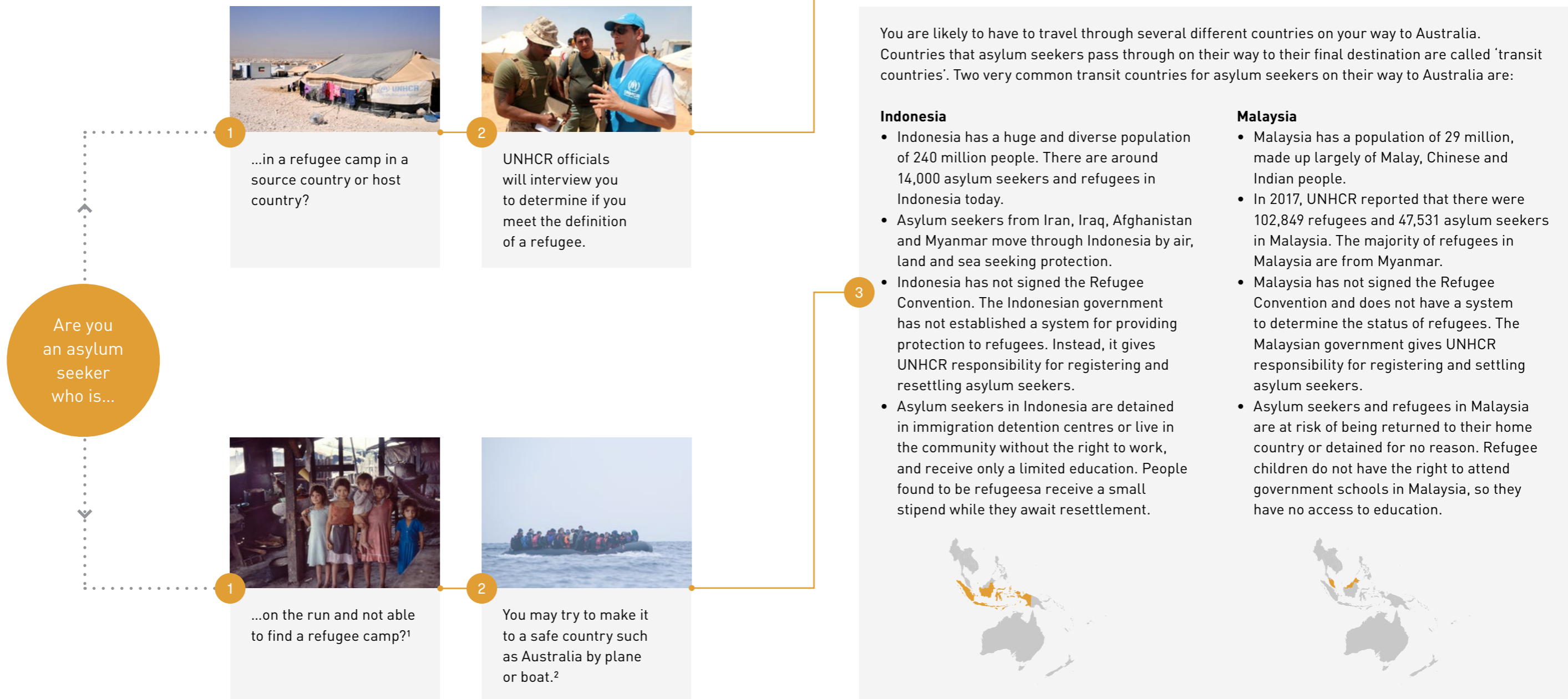


Manus Island Regional Processing Facility ²

THE PROCESS OF SEEKING ASYLUM IN AUSTRALIA TODAY: A FLOW CHART

Australia's policies regarding asylum seekers have changed a lot since Federation. As of July 2017, Australia has a Liberal federal government, and Operation Sovereign Borders is ongoing.

The following flow-chart puts you in the position of an asylum seeker living somewhere around the world. It shows the processes that you would go through as a result of the Australian government's policies, depending on your circumstances.



ASYLUM SEEKER FLOW-CHART

Are you going to travel by...




4 ...plane?
Note: This would usually only be possible if you were able to obtain a visa – for example, a tourist visa or a working visa.




4 ...boat?
Note: You would probably only travel by boat if you did not have access to a visa. You would probably have to pay a 'people smuggler', which is a person who transports people to a country illegally.

Did you arrive in Australia by boat...


5 Once you are in Australia, you can submit a written application for refugee status with the Department of Immigration and Border Protection. This application will be assessed by an officer of the department.
5 If your application is accepted, you will be granted a permanent protection visa. If your application is rejected, you can apply to have the decision reviewed by the Refugee Review Tribunal.

6 
6 If all your appeals are rejected, you will be deported back to your home country. You may be placed in immigration detention while you wait to be deported.

5 ... before July 2013?
This means that you arrived **BEFORE** Kevin Rudd's Labor government announced that asylum seekers who arrive by boat without valid visas would no longer ever be settled in Australia.
Your claim for refugee status is part of what is known as the 'legacy caseload'. You are still waiting today for a decision on your refugee status.
While you wait, you are subject to some form of immigration detention. This could be:
1. Onshore closed immigration detention (where you are not allowed to leave the facility); or
2. Community detention (if you are eligible). This involves living in community-based accommodation while you wait for an outcome on your visa application. While you wait, you can work and study, within certain limitations.



5 ... after July 2013?
This means that you arrived **AFTER** Kevin Rudd's Labor government announced that asylum seekers who arrive by boat without valid visas would no longer ever be settled in Australia.
You will:
• Have your boat turned around, if it is safe to do so;
• Be deemed by the Australian government to be an 'Illegal Maritime Arrival' (IMA);
• Be transferred to an offshore detention facility in Papua New Guinea or Nauru;
• Have your application for refugee status assessed under the domestic law of PNG or Nauru;
• Not be settled in Australia – instead, if you are found to meet the definition of a refugee, you will be temporarily settled in PNG or Nauru; and
• Also have the option of returning to your home country or being resettled in Cambodia.





Going further

QUESTIONS AND RESOURCES

This resource has offered a lot of factual information. We have tried to be as objective as possible in presenting it, but parts of this information may well have activated your emotions or raised further questions in your mind. Indeed, there are many issues arising from this information that are being fiercely debated at the moment by lawyers, politicians and many others.

This final section is intended to assist you if you would like to take the information that has been presented here and go further with it.

This section offers:

- Some key questions to reflect on; and
- Some suggestions for further resources if you would like to find out more about people seeking asylum in Australia and around the world.

KEY QUESTIONS
TO REFLECT ON

- 1 *What is the best way to prevent asylum seekers from dying at sea?*
- 2 *Should Australia be taking more refugees through its offshore refugee resettlement program?*
- 3 *Is mandatory detention of asylum seekers who arrive onshore without visas a breach of human rights?*
- 4 *Does the fact that Australia treats asylum seekers who arrive by boat differently from those who arrive by plane breach the Refugee Convention?*
- 5 *Do boat turnbacks breach the Refugee Convention?*
- 6 *Do Australia's offshore processing and settlement arrangements with PNG and Nauru breach the Refugee Convention?*
- 7 *How are asylum seekers portrayed in the media?*

FURTHER RESOURCES

Asylum Insight

Asylum Insight provides facts and analysis on Australian asylum policy with an international angle.

www.asyluminsight.com

Asylum Seeker Resource Centre

The Asylum Seeker Resource Centre runs programs to support and empower people seeking asylum in Australia, and advocates for social and policy change.

www.asrc.org.au

Behind the Wire

Behind the Wire is an oral history project documenting the stories of people who have been detained by the Australian government after seeking asylum in Australia.

www.behindthewire.org.au

Kaldor Centre

The Andrew & Renata Kaldor Centre for International Refugee Law at UNSW is the world's first research centre dedicated to the study of international refugee law.

www.kaldorcentre.unsw.edu.au

Refugee Council of Australia

The Refugee Council of Australia is the national umbrella body for refugees and the organisations and individuals who support them.

www.refugeecouncil.org.au

Road to Refuge

Road to Refuge runs community education events, workshops and other platforms about asylum seekers and refugees in Australia, alongside an interactive web program.

www.roadtorefuge.com

UNHCR Australia

UNHCR is the international agency whose job it is to safeguard the rights and wellbeing of refugees, forcibly displaced communities and stateless people.

www.unrefugees.org.au

**Asylum
Insight**
FACTS & ANALYSIS