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

Established in the Faculty of Law at the University of NSW in 2013, it seeks to produce high-quality research feeding into public policy and legislative reform.

The Centre for Policy Development is an independent and non-partisan policy institute. Our focus is developing long-term policy ideas that can outlast political cycles and enhance the lives of current and future generations. CPD's core model is threefold: we create viable ideas from rigorous, cross-disciplinary research at home and abroad. We connect experts and stakeholders to develop these ideas into practical policy proposals. We then work to convince government, business and civil society of the merits of implementation.



UNSW
AUSTRALIA



Beyond the boats: building an asylum and refugee policy for the long term

Report following high-level roundtable

Bob Douglas, Claire Higgins, Arja Keski-Nummi, Jane McAdam and Travers McLeod



Beyond the Boats:
Building an Asylum and Refugee Policy for the Long Term.
Bob Douglas, Claire Higgins, Arja Keski-Nummi, Jane McAdam and Travers McLeod

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of Australia21 or the Centre for Policy Development or the Andrew
& Renata Kaldor Centre for International Refugee Law.

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1 Foreword by the Chair of Australia21

Paul Barratt AO was a founding director of Australia21 and is its current Chair. He spent most of his career in the Commonwealth Public Service, mainly in areas relating to resources, energy and international trade, culminating in appointments as Secretary to the Departments of Primary Industries and Energy (1996–98) and Defence (1998–99).

Australia21 is delighted to join with our two partner sponsoring bodies in an exploration of fresh approaches to an issue that has become highly corrosive to the psyche and reputation of our nation.

Australia21 is a non-profit body that seeks under its charter to develop new and improved insights into complex issues important to Australian society and Australia's future. For 13 years we have been bringing together multidisciplinary groups of thinkers, researchers and policymakers to consider issues ranging from climate and the landscape, our society and our economy, to Australia's place in the world.

Last year, prompted by our concern at the need for a fuller analysis of the issue of refugees and asylum seekers than a simple need to 'stop the boats', we published a series of essays by 24 notable Australians, *Refugees and Asylum Seekers: Finding a Better Way*. It was always our intention to follow that publication with a high-level roundtable of people with special expertise relevant to the subject. This report distils the wisdom that arose from a highly productive dialogue held at Parliament House in Canberra on 11 July 2014.

Whatever policy framework we as a nation adopt, a fundamental starting point is that Australian asylum seeker policies should not compromise in any way any relevant treaty obligations, nor our ethical obligations to treat individuals with compassion and dignity and provide them with adequate standards of care, safety health and comfort while they are in Australia or Australian-arranged custody.

Every individual is precious, and it is unconscionable to permit our approach to those in our care to be informed by a motivation to 'send a message' to others; everyone deserves to be treated on their individual merits.

Accordingly, we need to lift our sights above tactical-level warfare against so-called people smugglers, and deal with global people displacement at a strategic level, designed as far as possible to ameliorate the suffering of refugees wherever they are.

This involves moving from a narrow law enforcement approach to a holistic approach designed to deal with the problem of displacement and to facilitate resettlement. It will involve skilful, creative and sustained diplomacy to encourage:

- International action to resolve the plight of refugees and displaced persons in line with contemporary realities regarding numbers of displaced persons and the causes of refugee movement
- Regional action to settle the claims of asylum seekers in South-East Asia promptly, and develop safe pathways to resettlement as an alternative to irregular migration by boat
- States that are not parties to the *Refugee Convention* to agree to behave as though they were, if they will not formally ratify the *Convention* (as the US does with the *Law of the Sea Convention*) Australian diplomacy will only be successful if it is perceived to be motivated by a desire to resolve the problems of displacement, rather than a desire to minimise their impact on us.

Paul Barratt



2 Foreword by the Chair of the Andrew & Renata Kaldor Centre for International Refugee Law, UNSW

Andrew Kaldor was a refugee whose family escaped war-torn Hungary with the assistance of people smugglers and forged documents. Similarly, his wife Renata's family fled from Czechoslovakia. Both families arrived in Australia in the late 1940s and found Australians to be 'welcoming and accepting'. Both Renata and Andrew feel a deep gratitude to Australia for the great opportunities given them. Andrew sits on the board of the Sydney Symphony Orchestra and is Chairman of ASI P/L, a group of private companies, which he founded. Renata is a member of Chief Executive Women and a director of Sydney Children's Hospital Network. Among many roles, she has been a trustee of The Sydney Opera House, a Judicial Commissioner in NSW and the Chair of NSW Women's Advisory Council.

Since Tampa, the refugee debate in Australia has been informed more by passion than analysis. Our current refugee policy has evolved as a reaction to events. The treatment of maritime asylum seekers, in particular, has been developed without deep consideration of our neighbouring countries, and has been driven more by political calculation than careful analysis of the situation.

Refugee and migration issues are easily confused, and public debate is riddled with misunderstanding and exaggeration. Fears are easily stirred. Unfortunately, the quality of the debate has not improved over the years. The debate today appears to be conducted from deeply entrenched positions, with much explosive rhetoric, few facts, and at an insidious tumorous cost to Australia.

As well as the moral issues, the financial costs of our policies are rarely examined. The cost of Australia's onshore and offshore detention system is the equivalent of over half the entire budget of UNHCR for all its projects.

UNHCR spends about AUD\$5.8 billion each year to support 51.2 million people of concern worldwide, while Australia spends over AUD\$3.3 billion on the detention of several thousand asylum seekers.

Renata and I helped to establish the Kaldor Centre in October 2013 to improve the quality of the refugee debate by increasing the availability of non-partisan research, analysis and commentary of the highest standard. Another aim was to create opportunities to connect opinion leaders and policymakers out of earshot of the media, in the belief that putting together the main players in a discreet environment would give them the political space to explore or conceptualise a much broader range of options. The Kaldor Centre was therefore very pleased to participate in the roundtable, which shared a similar aspiration.

The roundtable process worked very well. It certainly validated the effectiveness of a quiet, informed, Chatham House rule discussion. 35 experienced and influential people, whose views differed widely, calmly discussed priorities and policy choices. There are many good outcomes, including a noticeable reorientation of priorities, as well as several practical proposals.

The Kaldor Centre welcomes the report. It is a very important contribution. I hope it is widely read.

Andrew Kaldor AM



3

Foreword by the Chair of the Centre for Policy Development

Kate Miller has extensive senior executive experience in media, government and arts organisations. Kate worked for the Australian Broadcasting Corporation as a broadcaster and senior manager from 1974 till 2000. She joined the Board of the Centre for Policy Development in 2008, becoming chair in 2010.

The Centre for Policy Development (CPD) is an independent and non-partisan Australian policy institute. We produce policy proposals to outlast political cycles and enhance the lives of current and future generations. These policies promote fairness, inclusiveness, sustainability, resilience and democratic renewal. We have offices in Sydney and Melbourne and a network of fellows and experts.

CPD's core model is threefold: we create viable ideas from rigorous, cross-disciplinary research at home and abroad. We connect experts and stakeholders to develop these ideas into practical policy proposals. We then work to convince government, business and civil society of the merits of implementation. Our goal is to become one of Australia's leading institutes for developing and promoting policy ideas for Australia's long-term future.

CPD wants to work with other organisations to grow the forward looking policies Australia needs on some of the most challenging and multifaceted public policy issues. Together, we can provide space for a diverse community of thinkers to develop solutions to Australia's problems, and inform the public on the policies that affect them. This is why we collaborated with Australia21 and the Andrew and Renata Kaldor Centre for International Refugee Law.

The refugee debate is highly divisive. Impulsive solutions have been implemented with an eye to politics, not policy. Consistent misconceptions about the realities faced by asylum seekers have allowed fear and misguided anger to develop in the Australian public. Phrases such as 'stop the boats' are politically effective but do not capture the complex issues in the asylum seeker debate that can only be effectively addressed with a comprehensive framework.

Even if effective, current policy settings appear out of sync with Australia's international obligations and do damage to Australia's reputation abroad. There is no humanitarian justification for the conditions experienced by those awaiting determination of status or the time taken for processing, whether in Australia or offshore.

CPD was delighted to work with its fellows and supporters, including our founding Chairperson, John Menadue AO, Arja Keski-Nummi PSM and Peter Hughes PSM to prepare a discussion paper to inform the roundtable held in Canberra in July. The objective was to formulate options for a long-term asylum policy for Australia. Roundtable participants, including refugee experts, representatives from three political parties and guests from our neighbours, Indonesia and Malaysia, explored the options canvassed in more detail. Those discussions have culminated in this report, which we hope will lay the foundation for a durable domestic and regional framework and a positive ongoing discussion.

I have great faith in the humanity of the Australian people to accept those in need from across the world. Australia must also work with our neighbours and acknowledge the impact of our policies on the region. This will require an open and constructive dialogue between nations. This also reflects the global nature of asylum seeker issues, with millions displaced around the world. These strategies will only succeed if there is greater transparency and constructive public debate.

Ultimately, through dialogue, mutual understanding and openness we can build a long-term asylum seeker policy that all Australians can be proud of.

Kate Miller

4 Glossary

Annual migration intake	The total number of persons Australia accepts each year from abroad, including both migrants and persons who are accepted as part of the annual humanitarian intake.
Annual humanitarian intake	The number of refugees and other persons with special protection needs that Australia accepts for resettlement from overseas, combined with the number of persons already in Australia who arrived on a valid visa and are found to be refugees that Australia accepts each year. Maritime arrivals who are found to be refugees are not included in this intake.
Asylum seeker	A person who is seeking protection as a refugee but has not yet had their claim determined by an official.
Complementary protection	Under international human rights law, States are not permitted to send a person to any country or place where he or she faces a real risk of being arbitrarily deprived of their life, subjected to the death penalty, or subjected to torture or cruel, inhuman or degrading treatment or punishment. Because this ‘complements’ the protection owed to refugees under the Refugee Convention, it is known as ‘complementary protection’.
Durable solutions	The term used to describe a permanent solution for refugees to allow them to settle and rebuild their lives in dignity and peace. The three durable solutions pursued by States and UNHCR are voluntary repatriation, local integration and resettlement to a third country.
Expert Panel	The Expert Panel on Asylum Seekers constituted by Prime Minister Julia Gillard in 2012 and led by former chief of Australia’s defence force, Air Chief Marshal Angus Houston AC AFC. The other members were Paris Aristotle AM and Professor Michael L’Estrange AO.
Internally displaced person (IDP)	A person who has been forced to flee his or her home but remains within the borders of his or her country of origin.
Maritime arrival	An asylum seeker who arrived in Australia by boat without a valid visa. Maritime arrivals who arrived before 19 July 2013 either live in the Australian community on a bridging visa or in mandatory detention in mainland Australia. Those who arrived after that date are subject to mandatory detention and transfer to an offshore processing centre, and are denied the possibility of settlement in Australia.
Migrant	A person who moves from one country to another for a range of different reasons, including for work, education or to join family members. Migration may be temporary or permanent. Migrants are accepted at the discretion of the state, as opposed to refugees and other persons with protection needs who states may be required to accept as a result of their international legal obligations.
Non-refoulement	The principle of <i>non-refoulement</i> prohibits states from sending a person to a place where they face a real risk of persecution, arbitrary deprivation of life, torture, cruel, inhuman or degrading treatment or punishment, or being subjected to the death penalty. Australia has <i>non-refoulement</i> obligations under the <i>Refugee Convention</i> , the <i>International Covenant on Civil and Political Rights</i> , and the <i>Convention against Torture</i> , and also under customary international law.
Operation Sovereign Borders (OSB)	A militarised Australian border security operation which commenced on 18 September 2013, led by Lieutenant General Angus Campbell DSC AM, and supported and assisted by a wide range of federal government agencies.

Protection	This refers to the protection owed under international law to refugees and others with international protection needs (such as beneficiaries of complementary protection). At a minimum, it requires respect for the principle of <i>non-refoulement</i> , and the safeguarding of basic human rights in accordance with international refugee and human rights law.
Refugee Convention	The <i>1951 Convention relating to the Status of Refugees</i> , the key legal instrument in international refugee law and protection. The Convention was supplemented by the <i>1967 Protocol relating to the Status of Refugees</i> , which removed the temporal and geographical limitations of the earlier treaty.
Refugee status determination (RSD)	A process by which a government authority or UNHCR assesses a person's claim for refugee status against the criteria set out in article 1A(2) of the <i>Refugee Convention</i> . For the purposes of this report, it also encompasses the determination of complementary protection needs (since the two are considered as part of a single process in Australia).
Refugee	A person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, and who is unable or unwilling to return to his or her country of nationality or former residence on account of that fear.
Resettlement	This is one of the durable solutions for refugees who have already left their countries of origin and are living in camps or urban areas abroad. UNHCR estimates that around 800 000 refugees are in need of resettlement each year. Resettlement countries, such as Australia, select a small number of refugees identified as in need of resettlement and relocate them on a permanent basis. There are around 80 000 resettlement places available annually worldwide. In this report resettlement may also refer to complementary pathways to settlement, such as orderly departure and Special Assistance Categories.
Skilled Migration	The migration to Australia of skilled workers with qualifications and attributes which will contribute to the Australian economy and society, and/or address specific skill shortages. Skilled migration makes up almost 70 per cent of Australia's total annual migration intake. The Australian government can choose how many and which skilled migrants to accept each year.

5 The roundtable

This report emerges from a high-level expert roundtable on refugees and asylum seekers that was held at Parliament House, Canberra, on 11 July 2014 under the auspices of Australia21, the Centre for Policy Development and the Andrew & Renata Kaldor Centre for International Refugee Law at UNSW. These organisations have a shared interest in Australian policy on this issue. In early 2014, a steering group from the three organisations commissioned a discussion paper entitled *Beyond Operation Sovereign Borders: A Long-Term Asylum Policy for Australia*.¹

A select but diverse group of policymakers and experts was invited to participate in the one-day roundtable. A full list of the 35 participants is contained at the end of this report, and includes parliamentarians from the ALP, the Liberal Party and the Greens; a former Indonesian Ambassador to Australia; a strategist from Malaysia; UNHCR's former Assistant High Commissioner for Protection, Erika Feller; former senior Immigration and Defence officials, including former Immigration Minister, the Hon Ian Macphie and former Chief of the Defence Force, Admiral Chris Barrie; academic experts; representatives from the churches and civil society, including Expert Panel on Asylum Seekers member, Paris Aristotle; and a designated youth representative, David Lang, of the Australian Strategic Policy Institute. Prior to the roundtable, Australia21 ran two youth roundtables in Sydney and Canberra for people aged 18–30. The Sydney roundtable was exclusively for young people from refugee backgrounds. The views from both youth roundtables were fed into the high-level expert roundtable discussion.

The discussion paper provided the backdrop to the roundtable's deliberations, amplified by brief written responses by each participant circulated in advance. The roundtable was structured around two key questions:

- How can Australia achieve a non-partisan approach to the care and management of the approximately 33 497 refugees and asylum seekers who are already in Australia, Nauru and Papua New Guinea (PNG)?
- How can Australia move to an integrated and coherent approach with respect to future arrivals of asylum seekers, bearing in mind Australia's relative prosperity, our international legal obligations, our relationships with countries in the region, and the needs of those in search of protection?

There were four 90-minute sessions of open dialogue covering an assessment of Operation Sovereign Borders; possible responses to the situation of the asylum seekers already in Australia, PNG and Nauru; and ways in which a sustainable regional framework, and domestic and regional dialogue and engagement might be built outside a crisis management framework.

Discussions were held under the Chatham House rule and proceedings were audiotaped and transcribed without identifying individual speakers. While there was no attempt to reach consensus in the rich dialogue that resulted, there was consensus among the participants on a number of issues, including the need for a new national conversation on asylum policy in the Australian community. Notwithstanding the Chatham House rule, a number of participants agreed to have their comments on specific issues incorporated in this report.

Inevitably, there were differences in starting points and approaches. Some participants emphasised the imperative of taking a principled approach in line with international legal obligations and State responsibility, for instance. Others stressed the importance of combatting people smuggling and irregular movement, even if that meant maintaining a system of offshore processing. Importantly, however, the roundtable represented an attempt to find common ground, and to consider options that might involve various degrees of compromise, but which various stakeholders could nonetheless ‘live with’.

While the report seeks to capture the roundtable discussion, at times it also draws on the wider literature to help contextualise the discussions. We hope it stimulates a new national conversation about Australia’s future contribution to the protection of refugees and asylum seekers.

6 Executive summary

Forced migration is an age-old phenomenon. It cannot be stopped or controlled by any country. The reasons for it are as varied and complex as the people who seek protection from persecution, war, civil conflict and other harms.

In its 2013 *Global Trends* report, UNHCR estimated there are over 51 million people displaced around the world, the highest figure since World War II. Not all are displaced across international borders, and only a fraction of the world's displaced seek Australia's protection. Nevertheless, it is likely that global phenomena, such as civil war, increased resource scarcity, and the impacts of natural disasters and climate change, will increase the impetus for people to move in search of safety. Australia cannot ignore this continuing reality.

Recently, the major political parties in Australia have responded to this state of affairs by treating the challenge of forced migration primarily as a matter of domestic politics, rather than regional policy. Debate on asylum policy has become toxic. 'Successful' policy has been defined as that which can 'stop the boats'. On that measure, policies initiated by the previous Labor government, and strengthened by the Coalition government under the banner Operation Sovereign Borders, have been successful in significantly reducing the number of asylum seekers arriving in Australia by boat.

However, this approach does not deal with the complex nature of forced migration, its causes and human consequences, nor Australia's responsibility within the international community to help to manage these and related issues. This approach does not resemble a long-term asylum and refugee policy for Australia. To establish one, we must redefine our conception of the 'problem', reset our goals, review our strategy and recalibrate our conception of 'success'.

The roundtable discussion concentrated on two issues:

- a. Recent Australian policy responses to maritime asylum seekers; and
- b. The need to move towards a long-term asylum policy that could feasibly win the support of all political parties and all Australians, enabling the nation to contribute more constructively to this ongoing problem.

Australia is an attractive destination for asylum seekers, as it is in a region where few countries are parties to the *1951 Refugee Convention* or its *1967 Protocol*.

In the period 2012–13, there was an upsurge in the numbers of asylum seekers arriving in Australia by boat, both in overall terms (30 310 between January 2012 and July 2013) and in intensity (over 3000 arrivals per month between March and July 2013). People smugglers facilitated many of these journeys. Since 2001 approximately 1400 people are known to have died seeking to reach Australian shores. There was no obvious upper limit to the number of asylum seekers that might attempt to come by sea.

Both major political parties have, in response, given a clear and unambiguous signal to people smugglers that future efforts to secure permanent protection in Australia for their paying clients will fail. That is the context in which future policy must be developed at the present time. The announcement of bipartisan support for denial of access to Australia for 'irregular maritime arrivals' has almost certainly had a deterrent effect on the activities of people smugglers, but it risks closing the protection space.

The immediate issue is that there are around 33 500 asylum seekers in Australia and more than 2300 in Nauru and PNG who may be in need of international protection and without a durable solution. These people need to have their status assessed and, if found to be refugees or in need of complementary protection (because they are at risk of torture, cruel, inhuman or degrading treatment or punishment, or being arbitrarily deprived of life), they must be granted a legal status that respects their rights and enables them to function as members of the community. Those who are not in need of international protection should be assisted to return home safely.

The second issue relates to Australia's longer-term approach to asylum seekers. The number of people seeking asylum worldwide is vast and growing. Australia has helped to build the architecture of international protection for people fleeing persecution or other forms of significant harm. We have responsibilities to live up to and regional concerns to weigh carefully.

The Australian community expects the government to maintain adequate control over entry to Australia. It also expects the government to do this in a fair, efficient and transparent way that upholds our international responsibilities towards people seeking protection. These expectations are not mutually exclusive.

Australia's goals should be threefold:

- to retain appropriate order and control over the immigration program by tackling the problem of people smuggling and preventing deaths caused by unsafe journeys at sea;
- to be sensitive to the regional implications of our policy choices; and
- to manage the cross-border movement of people in a way that respects the human rights of asylum seekers and is consistent with international legal obligations towards refugees and others at risk of harm.

There is no panacea or 'quick fix'. Successive Australian governments have employed tough measures aimed at deterring the irregular movement of people, including mandatory detention, maritime interception, turn backs and offshore processing. Such measures have become increasingly secretive and militarised. Stopping individuals from seeking protection by itself is not an adequate overall principle. A long-term refugee and asylum policy and regional framework is only achievable if viewed alongside other aspects of our migration and foreign policy.

The acute phase of maritime arrivals appears over. The major parties have indicated their objective is to maintain this state of affairs. We now have an opportunity to develop an overarching national asylum and refugee policy for the long term.

This report makes nine complementary recommendations to facilitate this. They are grouped under three headings: **Managing Arrivals, Conditions and Treatment**, and **Regional and Community Engagement**. Together, they address the immediate needs of asylum seekers while also prioritising the construction of a platform for the long term.

Developing policies in this field will be influenced by factors beyond the control of any country acting alone. We need political engagement at the international, regional and national levels, cognisant of the global reality of forced migration.

Political parties should support a new conversation in Australia, but need a framework that is broadly acceptable across party lines and to the Australian community, and removes the inevitable temptation to seek short-term electoral advantage. Cross-party consensus will be a necessary condition for a sustainable long-term policy.

Post-Roundtable Developments

In September 2014, the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* was introduced into Parliament by the Coalition government. Among other things, the bill seeks to reintroduce Temporary Protection Visas (TPVs) for recognised refugees. It also proposes the creation of a new temporary visa, the Safe Haven Enterprise Visa (SHEV), which may lead to permanent migration pathways for certain TPV holders.

The idea is that TPV holders will have the option to transfer to a SHEV if they agree to work or study in a rural area for five years, and do not claim benefits for more than 18 months. If they meet certain conditions, they will be eligible to apply for a standard migration visa that will enable them to stay permanently.

This option is preferable to indefinite detention and bridging visas without work rights. Nevertheless, there remain unanswered questions and some reservations. At the time of writing, it is unclear how the system will work in practice. While it may open up a viable pathway for those with skills and professional qualifications that are needed in Australia, it may not be a viable option for refugees who are particularly vulnerable and unable to work, such as those who arrived as unaccompanied minors and are now young adults.

If individuals cannot secure a migration visa – and the immigration minister has indicated that the threshold is very high – then they must be reassessed for a new TPV every three years. This is inefficient from a bureaucratic perspective and will make it very difficult for refugees to recover from trauma and rebuild their lives. The detrimental mental health consequences of TPVs are well-documented. Notably, the last time TPVs were used, around 90 per cent of refugees ended up staying permanently in Australia. This is because in many cases, situations of persecution and other serious violence make return home impossible.

7 List of recommendations

As a package, these recommendations provide the elements for an overarching national asylum and refugee policy for the long term. Recommendations 1, 4 and 7 would make an appreciable difference immediately. The remainder are necessary conditions for an improved and sustainable policy over the coming years.

Managing Arrivals

Recommendation 1: Expand pathways for humanitarian resettlement:

- a. increase the annual humanitarian intake to a minimum of 25,000, or no less than 15 per cent of the annual migration intake, whichever is higher;
- b. negotiate orderly departure arrangements to allow particular cohorts of asylum seekers to leave their countries in a safe manner;
- c. consider using the Special Assistance Category visa for identified vulnerable displaced cohorts.

Recommendation 2: Ensure processing is fair, transparent and effective, wherever it takes place.

Recommendation 3: Speed up processing for specific cohorts from source countries where there is an objective protection need.

Conditions and Treatment

Recommendation 4: Swiftly determine unresolved claims and improve conditions for asylum seekers in Australia, including by providing appropriate work rights.

Recommendation 5: End mandatory detention, except for initial health, security and identity screening.

Recommendation 6: Ensure refugees in offshore processing centres have access to durable solutions.

Regional and Community Engagement

Recommendation 7: Develop and fund a regional Track II dialogue.

Recommendation 8: Develop a sustainable regional framework.

Recommendation 9: Foster a new national conversation about asylum seekers that engages all parts of the community.

8 Setting the scene

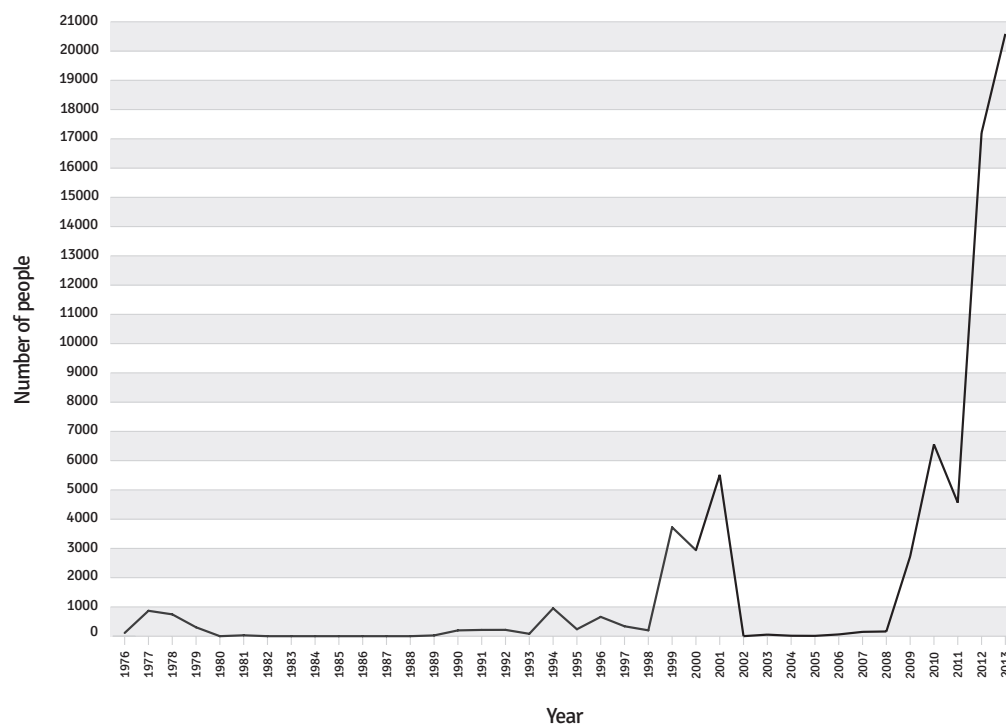
8.1 The current policy environment

8.1.1 Recent maritime arrivals

Between 2008–13, some 51 796 asylum seekers arrived in Australia by boat in search of protection.² Many of their journeys were facilitated by people smugglers. The majority of asylum seekers who came were found to be refugees. Nevertheless, the growing intensity of maritime arrivals

(more than 20 587 in 2013 and more than 3000 per month between March and July of that year) was of concern to politicians, policymakers and the general public. A particular concern was the number of known deaths at sea, approximately 1400, by those seeking to reach Australian shores.³

Number of people arriving by boat, 1976 to 2013 (excludes crew after 1989)



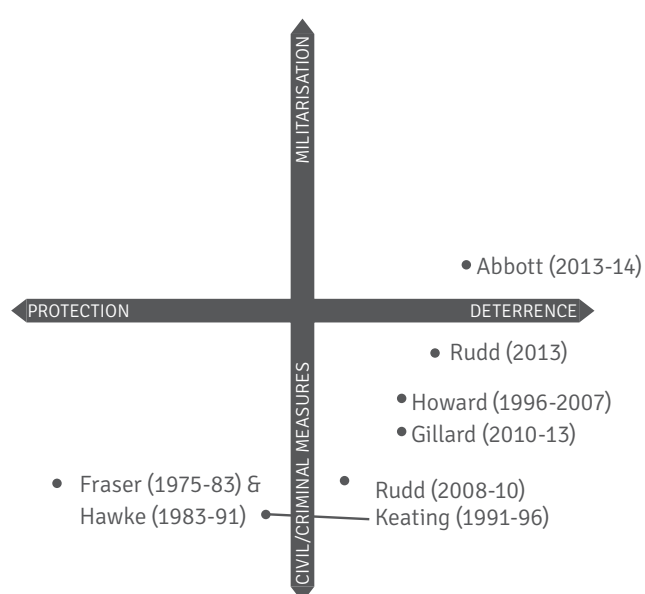
Source: Phillips 2014

8.1.2 Militarisation of asylum policy

This state of affairs had a direct impact on government policy. The language of deterrence and militarisation became dominant. Indeed, over the past decade or so a tension has emerged between ‘protection’ and ‘deterrence’ as the overall objective (ends) of Australia’s asylum policy. There has also been an evolution in the balance of military and civil/criminal measures (means) used to achieve that objective.

The figure below captures the relationship between means (on the vertical axis) and ends (on the horizontal axis). While the precise placement of each government will be debated, there is no doubt about the general trajectory of each – from a protection/civil approach (lower left) to a deterrence/militarisation approach (upper right).

The changing approach to asylum and refugee policy



Source: Authors

The Fraser Coalition government (1975–83) resettled large numbers of Indochinese refugees through the establishment of the offshore refugee resettlement program and by creating orderly departure arrangements. The Fraser government was also responsible for introducing the special humanitarian program. This approach was largely maintained by the Hawke Labor government (1983–91), which also endorsed the Comprehensive Plan of Action to resolve forced migration in the region. The Keating Labor government (1991–96) commenced the development of a regulation-based refugee status determination process and also introduced mandatory detention for all unauthorised arrivals. The Howard Coalition government (1996–2007) excised territory from Australia’s migration zone, used temporary protection visas for recognised refugees and established offshore processing centres in Nauru and Papua New Guinea. The Rudd Labor government (2007–10) abolished temporary protection visas and offshore processing, but left the excision laws in place. It focused its attention on disrupting people smuggling networks to prevent asylum seekers from reaching Australia by boat. The Gillard Labor government (2010–13) sought arrangements with East Timor and Malaysia to enable asylum seekers to be sent there for processing, but neither was implemented. Offshore processing was reintroduced in 2012 and the whole Australian mainland was excised from the migration zone in 2013. The Rudd Labor government (2013) declared asylum seekers who arrived by boat would never be settled in Australia, adopting a ‘regional resettlement arrangement’ with Papua New Guinea. The Abbott Coalition government (2013–14) developed a militarised strategy to maritime arrivals through Operation Sovereign Borders, including interceptions and turn backs of boats. Other elements of the current government’s policy are detailed in this report.

Protection-focused policies may involve the resettlement of refugees from overseas, the conferral of work rights on asylum seekers in the community, and high-quality refugee status determination procedures that are fair, efficient and transparent. By contrast, deterrence-focused policies elevate mandatory detention, denial of access to Australian territory and offshore processing. At the 2013 federal election, a contrast was drawn between ‘processing people and drawing them through the region’ and being ‘focussed unashamedly on deterring people’, although it was unclear whether those being deterred were asylum seekers, people smugglers, or both.⁴ The tension between policy ends has also been evident regionally in the way that countries have alternated between the ideas of a regional *protection* framework and a regional *deterrence* framework.⁵

Historically, the role of the military in the management of asylum policy was confined to interception and rescue at sea. However, more recently, the management of asylum seekers has involved considerable military resources. Asylum seeker operations, such as Operation Sovereign Borders, have been perceived in military terms, and Defence personnel have been responsible for operations at sea and overall command.

The quadrants in the graphic above demonstrate the complexity of preserving the integrity of Australia’s response to forced migration. Some have characterised the challenge as maintaining a high level of domestic and regional protection and stemming the unpredictable (and previously escalating) arrival of boats by sea. Others, however, have gone a step further and have presented the overall challenge in terms of border security and threats to sovereignty.

As the Minister for Immigration and Border Protection stated in separate press conferences this year:

*A strong physical deterrent on your border, whether on land or at sea, is a mandatory prerequisite for effective border protection. As a government we have sought to bring this same single minded focus on deterrence to our regional engagement and cooperation on people smuggling, and now more broadly on transnational crime.*⁶

*While we do not comment on the details of our maritime operations, Border Protection Command is doing things differently to provide active deterrents to those seeking to enter Australia illegally by boat.*⁷

Australia is now uncomfortably settled in the ‘deterrence/militarisation’ quadrant. An overarching inquiry of the roundtable was whether we should remain there over the short, medium and long term.

8.1.3 Operation Sovereign Borders

Operation Sovereign Borders is a central part of the current policy pursued by the federal government in response to maritime asylum seekers. It functions through a Joint Agency Taskforce commanded by Lieutenant General Angus Campbell, who is overseen by the Minister for Immigration and Border Protection. The Taskforce brings together the departments of Immigration, Defence and Customs, along with many other government intelligence and policing agencies.⁸ In all, 16 departments and agencies are involved, as well as secondees from additional agencies. Reflecting the focus of the policy, it is noteworthy that on assuming office in September 2013, the Coalition government changed the name of the Immigration Department from the Department of Immigration and *Citizenship* to the Department of Immigration and Border *Protection*.

Operation Sovereign Borders has resembled a militarised approach to asylum policy. It is premised on the idea that increasing numbers of asylum seekers coming to Australia by boat constitute a ‘national emergency’ that requires ‘the discipline and focus of a military operation’.⁹

Roundtable participants were uncomfortable with the recent militarisation of asylum policy:

It is a very classic military role to carry out these kinds of operations. Having said that, it is very unpleasant and what I call a ‘dirty’ kind of work. It challenges the people involved; it challenges the compassion and in the long term I think it is detrimental to the quality of the force. It is having a detrimental effect on many of them [military personnel]. Certainly, when people lose their life at sea, that has a serious detrimental effect. But even the constant involvement in these operations is having a negative effect as well.

We have now got to the stage where the public at large thinks we are being protected from dangerous criminals. That is utterly false. It is not until that falsehood has been exposed that a humane policy has any prospect of success.

Most felt that the phenomenon of seeking asylum is a humanitarian issue, rather than a border security issue:

The word smuggling is nonsense in our context. Every single person in one of those boats wants to give themselves up to the competent authorities and declare ‘I am a refugee, please assess my claims.’

Roundtable participants suggested that a defence-focused approach to asylum is unnecessary and risks undermining Australia’s bilateral relationships in the Asia-Pacific region. Furthermore, it does little to achieve humane, long-term policy solutions that support the strengthening of the international protection regime.

Instead, as outlined in the Executive Summary, roundtable participants believed Australia’s goals should be threefold:

- to retain appropriate order and control over the immigration program by tackling the problem of people smuggling and preventing deaths caused by unsafe journeys at sea;
- to be sensitive to the regional implications of our policy choices; and
- to manage the cross-border movement of people in a way that respects the human rights of asylum seekers and is consistent with international legal obligations towards refugees and others at risk of harm.

8.2 Broader context

8.2.1 Global trends

While the discussion at the roundtable focused in particular on Australia’s responses to maritime arrivals, there was clear recognition that forced migration is a global issue, and Australia is neither immune from its consequences nor able to be insular in its responses. Many groups are subject to persecution in their country of origin, whether because they are gay in a society that does not tolerate this, or at risk of serious human rights violations because of their political opinion, for instance. During the writing of this report, events in Syria and Iraq brought the issue of forced migration into sharp focus. Forced migration is intensifying in parts of the Middle East, South Asia and elsewhere, and is likely to worsen in the period ahead, as governance and security arrangements deteriorate in source countries and countries of first asylum.

The numbers speak for themselves. In its 2013 *Global Trends* report, released in mid-2014, UNHCR reported that there were over 51.2 million displaced people in the world – the highest number since World War II. This number includes refugees, asylum seekers, stateless persons and internally displaced persons. There are approximately 11.7 million refugees under UNHCR’s mandate. Countries such as Jordan, Lebanon, Pakistan and Kenya host four-fifths of the world’s refugees.

Indeed, around 75.2 per cent of people who seek protection remain in an adjacent country.

The Asia-Pacific region currently has more than 3 642 300 refugees, which is around 29.7 per cent of the total world refugee population.

These numbers, and the lack of effective protection available, create the conditions in which people smuggling can flourish.

Top refugee hosting countries, 2013 (total numbers)

Top refugee hosting countries, 2013 (total numbers)		
1	Pakistan	1 616 507
2	Iran	857 354
3	Lebanon	856 546
4	Jordan	641 915
5	Turkey	609 938
6	Kenya	534 938
7	Chad	434 479
8	Ethiopia	433 936
9	China	301 047
10	United States	263 662
47	<i>Australia</i>	<i>34 503</i>

Source: Phillips 2014

Top refugee hosting countries, 2013 (refugees per 1000 inhabitants)

Top refugee hosting countries, 2013 (refugees per 1000 inhabitants)		
1	Lebanon	177.63
2	Jordan	88.25
3	Chad	33.88
4	Mauritania	23.85
5	Malta	23.09
6	Djibouti	22.93
7	South Sudan	20.32
8	Montenegro	13.65
9	Liberia	12.40
10	Kenya	12.06
62	<i>Australia</i>	<i>1.48</i>

Source: Phillips 2014

8.2.2 Australian asylum trends

The number of people who arrive by air or by sea and seek asylum in Australia is small when compared to global asylum trends. The latest reporting from UNHCR shows that in 2013, there were some 330 700 asylum seekers in the world's 44 industrialised countries.

Of this number, Australia received only 2.6 per cent of all applications. This figure highlights that industrialised countries bear only a very small burden of the total number of people displaced worldwide.

Asylum applications per 1000 inhabitants
(across UNHCR selection of 44 industrialised countries)

Asylum applications per 1000 inhabitants		
1	Malta	4.8
2	Sweden	4.6
3	Luxembourg	3.8
4	Switzerland	3.2
5	Montenegro	2.5
6	Austria	2.0
7	Norway	1.9
8	Liechtenstein	1.9
9	Belgium	1.7
10	Cyprus	1.4
11	Denmark	1.1
12	Greece	0.9
13	France	0.9
14	Germany	0.8
15	Australia	0.7

Source: UNHCR 2014, plus statistical annexes

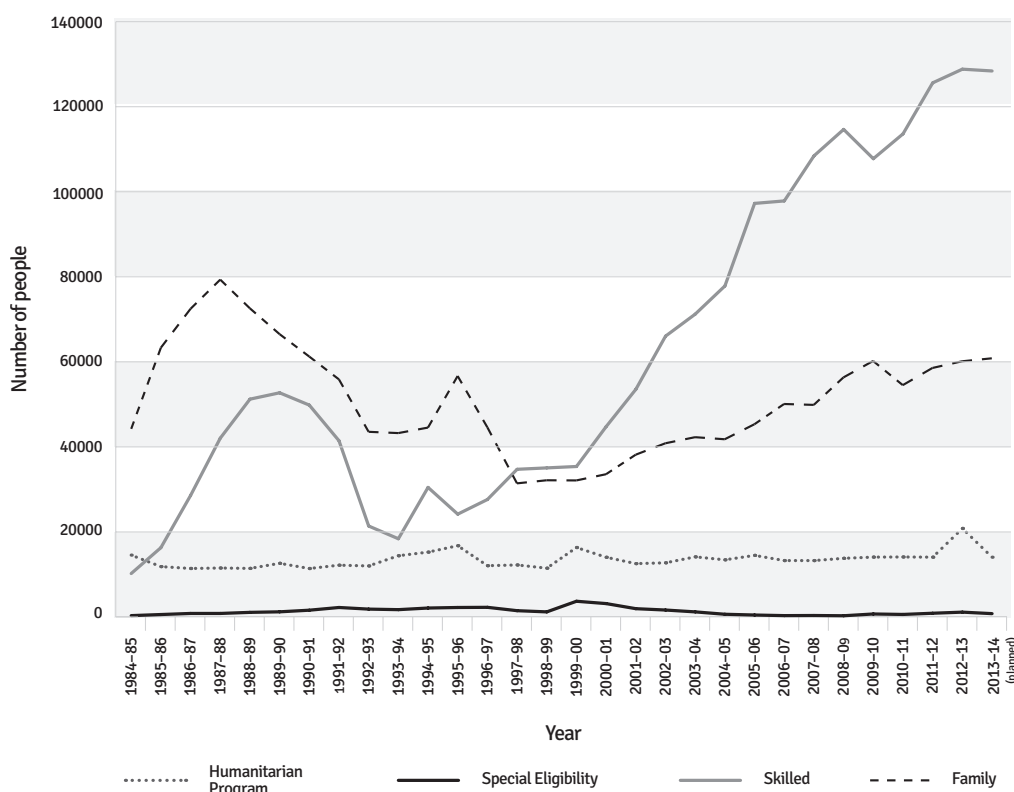
8.2.3 Migration and humanitarian programs

Migration has played and continues to play a vital role in Australia's development. The skilled migration program has helped to grow Australia and has played an important role in our continued prosperity. In addition, Australia has resettled over 800 000 refugees since the end of the Second World War. Many have become national leaders in innovation, business, arts and the sciences. The humanitarian program should not be confused with the skilled migration program. Both make a significant contribution to the Australian community, either through economic development or by strengthening the social fabric on which the country rests.

Roundtable participants suggested that the total size and relative proportion of the humanitarian program in the annual migration intake was too low.

The graph below does not include temporary visas granted, for example, overseas students and business visas (which numbered over 385 000 from 2012-2013). In reality, the total migration program (permanent and long term temporary visa grants) is much larger than the 190 000 figure often cited. The ABS forecast total migration arrivals for the year ending 30 September 2014 to be 511 500, with a net overseas migration for the same period as 246 300.

Number of family, skilled, special eligibility and humanitarian visas granted in Australia, 1984-85 to 2013-14



Source: Australian Government Department of Immigration and Border Protection 2014, Spinks 2010

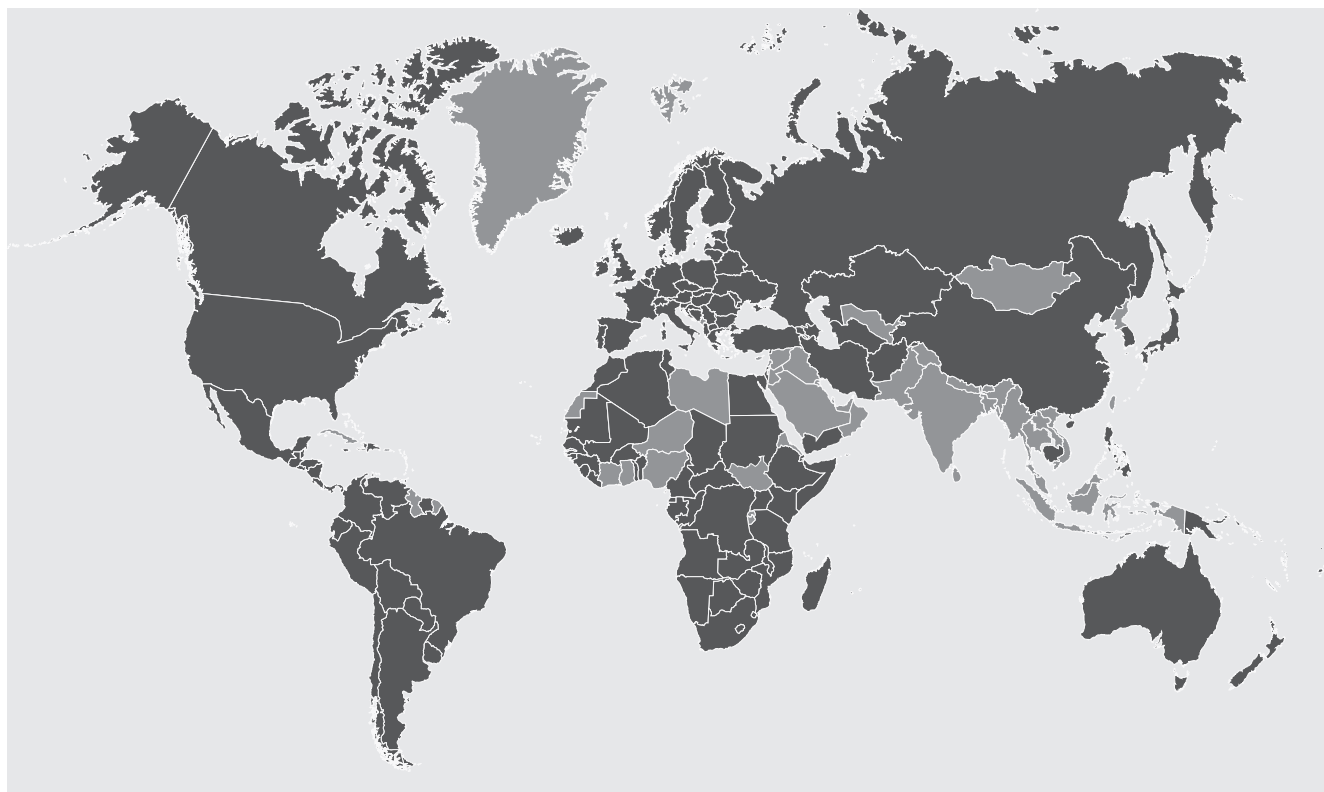
8.3 Protection Obligations

8.3.1 The legal context

Since the early 20th century, and especially in the aftermath of World War II, the international community has progressively developed a system of governance that seeks to ensure that people forced to flee their country can seek protection in another if required.

The two main instruments of this system are the *1951 Refugee Convention* and its *1967 Protocol*. 148 countries are parties to one or both of these instruments, which set out the rights and obligations of both refugees and those countries. The three main aspects of particular relevance to the Australian context are the definition of a refugee, the principle of non-refoulement and the prohibition on penalising asylum seekers who enter without travel documents.

World map of parties to the 1951 Refugee Convention and/or its 1967 Protocol



■ States parties to the 1951 Refugee Convention and/or its 1967 Protocol

■ States that have not yet acceded to the 1951 Refugee Convention and/or its 1967 Protocol

Source: UNHCR 2014

A refugee is defined as someone who is outside their country and has a well-founded fear of being persecuted because of their race, religion, nationality, political opinion or membership of a particular social group, and is unable or unwilling to return home because their own country cannot or will not protect them.

The principle of *non-refoulement*, contained in article 33, is the cornerstone of the international protection regime. This principle prohibits countries from removing a person to any place where their life or freedom may be threatened for reasons of their race, religion, nationality, membership of a particular social group or political opinion (in other words, because a person is a refugee). While not every asylum seeker is a refugee, the principle of non-refoulement means that every asylum seeker must at least have the opportunity to present their claim before they are returned to a country where they may face persecution. Like a number of other provisions, article 33 also applies to asylum seekers (that is, those awaiting the determination of their protection claim).

Under international human rights law, the principle of non-refoulement also prevents countries from removing people to any place where they face a real risk of torture or cruel, inhuman or degrading treatment or punishment, the death penalty, or arbitrary deprivation of life. The principle of *non-refoulement* under both international refugee and human rights law is reflected in the *Migration Act 1958 (Cth)*.

Finally, it should be noted that article 31 of the *Refugee Convention* prohibits countries from imposing penalties on asylum seekers who arrive without travel documents, provided that they come directly from a country of persecution and can show good cause for entering without documentation. International law does not require that asylum seekers seek protection in the first country they reach, in recognition of the fact that not all countries have the capacity to provide adequate protection or durable solutions.

The main countries through which asylum seekers pass to reach Australia – such as Indonesia and Malaysia – are not parties to the Refugee Convention or its Protocol, and do not have national procedures in place for determining refugee status or ensuring that the rights of refugees and asylum seekers are respected.

Regional map of parties to the 1951 Refugees Convention and/or its 1967 Protocol



■ States parties to the 1951 Refugee Convention and/or its 1967 Protocol

■ States that have not yet acceded to the 1951 Refugee Convention and/or its 1967 Protocol

Source: UNHCR 2014

While there has, on occasion, been discussion about the relevance of the *Refugee Convention* in contemporary situations, roundtable participants generally agreed that the *Convention* remains as relevant today as it was when first drafted after World War II. As a human rights treaty, it is a 'living instrument' that adapts to changing circumstances. As one roundtable participant noted,

I want to pick up on the point of difference around the Refugee Convention. A couple of people did make the comment that it was no longer adequate and might need to be renegotiated. Certainly, it remains the one convention that provides a universally and globally acceptable definition of who is a refugee and who is not. And while it was originally negotiated in the context of World War II, it was subsequently extended in 1967 to remove historical and geographical limitations and it remains really the foundation of an international refugee protection system. While it does not specify the process for determining refugee status, implicit in the Convention is that there must be a fair and efficient process. Sometimes, a lot of acrobatics are undertaken to avoid coming down to the basics of undertaking a process of establishing whether somebody has a well-founded fear of persecution or not.

Without commenting about where processing takes place I think it is fundamental to have that universally agreed definition of refugee status as a foundation. It may need to be supplemented to respond to certain forms of movement in relation to climate change or other developing trends. But I think it really does remain the cornerstone and I think it would be very unfortunate to push for renegotiation. Cyclically, states from time to time raise the question 'maybe we should have a new look at the Convention.' But every time states come to realise that it is not in the interests of the international community to renegotiate the Refugee Convention.

In the context of maritime asylum seekers, other international treaties are also relevant – for instance, the 1982 *Convention on the Law of the Sea*, the 1974 *Safety of Life at Sea Convention*, and the *Migrant Smuggling Protocol to the UN Transnational Organised Crime Convention*. These treaties reinforce the need to ensure that the rights and safety of asylum seekers arriving by sea are respected. In addition, the 2004 *International Maritime Organization's Guidelines on the Treatment of Persons Rescued at Sea* state that rescued asylum seekers should not be disembarked 'in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea.'

Australia's policy responses to asylum seekers arriving by boat must be consistent with its international legal obligations under all of the relevant treaties.

8.3.2 Transparency

In keeping with the militarisation of asylum policy, the immigration minister has stated that he will not comment on ‘operational and tactical issues that relate to current or prospective operations’.¹⁰ The commander of Operation Sovereign Borders, Lieutenant General Angus Campbell, has stated that secrecy about ‘on-water’ operations is necessary in order to prevent people smugglers from learning about ‘changes to procedures or our tactical activities’.¹¹ Some policymakers also hold the view that limiting information flow reduces the risk of undermining bilateral arrangements.

As a result, little information has been made available publicly (including to Parliament) about the detection, interception and turning back of boats. Media briefings are now given ‘as required’, rather than on a weekly basis. Recently, the Coalition government has provided new information on the number of boats turned back under the new policy settings. It remains unclear when further information will be supplied.

The point was strongly made in the roundtable that this lack of transparency is not conducive to good public policy:

If the facts are there, Australian people are able to make decisions... But you cannot have a proper debate when there is a shroud of secrecy... you cannot have good public policy if you are not going to be open and transparent about it.

When you don't provide information... you get bad policy outcomes. This resulted in a situation where we breached the territorial waters of Indonesia. That created huge concerns on the Indonesian side.

I want to reiterate the need for transparency. I think that one of the real problems in the current circumstances is that we simply don't know things, which means that government gets away with not being as accountable as it ought to be.

8.3.3 Protection and deterrence

Operation Sovereign Borders, in conjunction with policies introduced by the previous Labor government, appears to have stemmed the flow of maritime arrivals.

Many roundtable participants believed current policy settings rest on an imperfect and dangerous premise. Critical to any asylum policy is not whether it deters, but whether the needs of those seeking protection are met.

We are all about what works for government and not what works for people. And I think that what we are seeing with Operation Sovereign Borders is a further deterioration in the process so we have gone from politicisation to militarisation of a humanitarian issue.

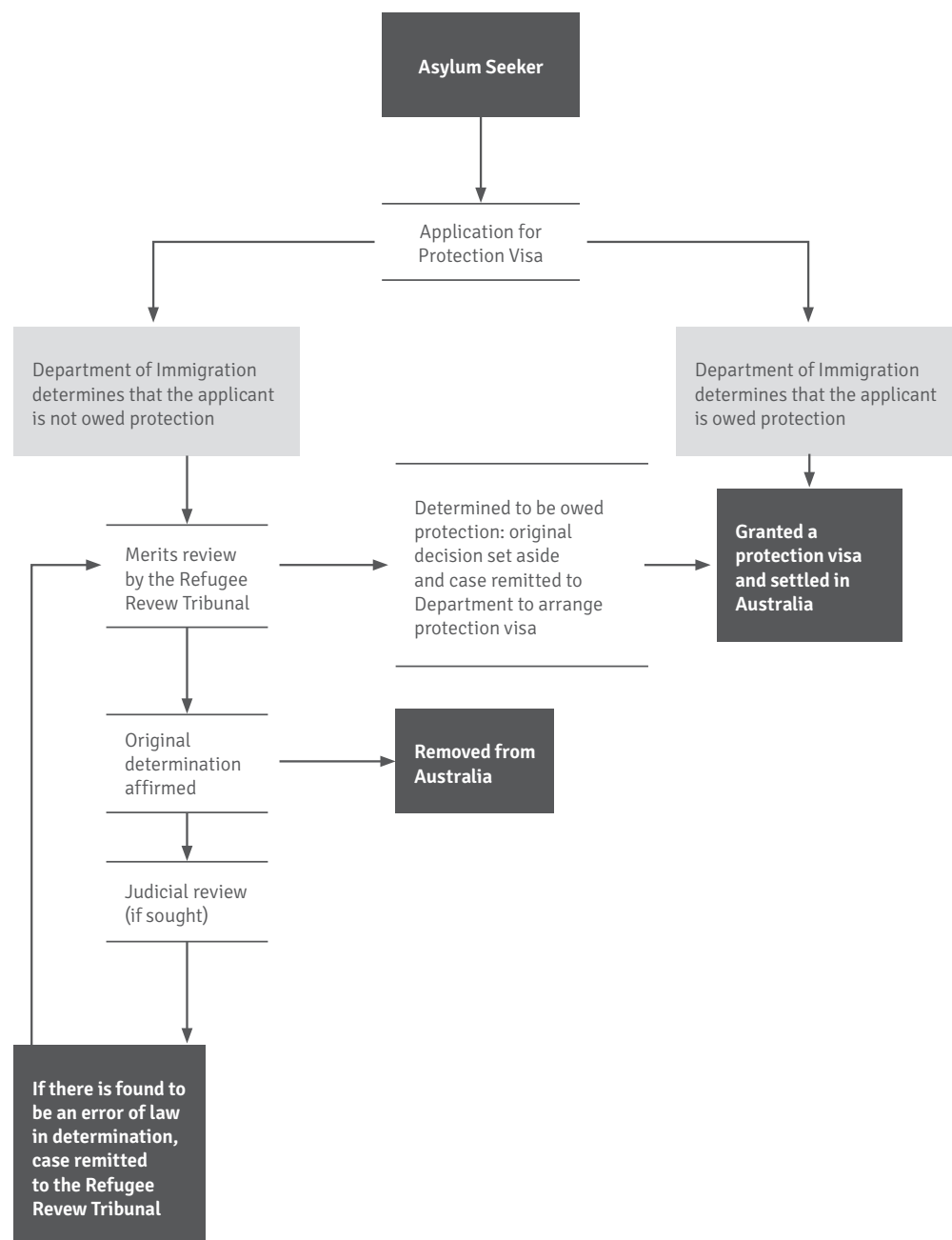
Participants were particularly concerned that Operation Sovereign Borders denies asylum seekers access to an adequate refugee status determination process. For example, since December 2013 asylum seekers attempting to reach Australia by boat from Indonesia have been intercepted, placed onto disposable lifeboats and towed back into international waters. At times, Australia has also entered Indonesian territorial waters, reportedly in violation of international law.¹² In late June 2014, asylum seekers intercepted off the coast of Sri Lanka were returned directly to Sri Lankan authorities. These actions may have placed individuals at risk of harm and may also constitute a violation of Australia’s non-refoulement obligations.

It was mentioned earlier today that no policy framework should be designed to prevent people from seeking protection. I fundamentally agree with that. I think that international legal principles must guide all our actions. They should also guide the way we interact with other countries, which have not signed up to those agreements.

...the problem of Operation Sovereign Borders and the way in which people are going about it is that it is seeking to prevent people from seeking protection. And no policy framework should be designed to stop people from seeking protection. You can design policy to try and stop the necessity for people smuggling as a part of that process. But it should not be designed to stop people seeking and applying for protection and having their claims processed fairly, properly and transparently.

Roundtable participants noted that policy debates must move beyond the idea that ‘stopping the boats’ is the imperative and should start to address broader issues, including addressing the protection needs of asylum seekers in a manner that is transparent, sustainable and consistent with international best practice.

Refugee status determination process: best practice



Source: Authors

9 Recommendations

9.1 Managing Arrivals

9.1.1 Expand migration pathways for humanitarian resettlement:

(a) increase the annual humanitarian intake to a minimum of 25,000, or no less than 15 per cent of the annual migration intake, whichever is higher.

Australia has an annual quota for refugees and others with special humanitarian needs to be resettled in Australia that totals 13 750. Currently, 6000 places are allocated to refugees overseas and 5000 places are allocated to the *special humanitarian program* (namely, people subjected to substantial discrimination amounting to a gross violation of their human rights in their home country, and with family or community links in Australia). The remainder have been allocated to refugees in Australia who arrived on a valid visa.

While Australia's annual resettlement quota of 6000 refugees is generous on a per capita basis, it is a very small contribution to the resettlement needs of refugees globally. Only 22 countries have annual resettlement programs, offering a total of 86 000 places in 2013–14. While not all refugees require resettlement – UNHCR estimates there are around 800 000 in need of resettlement each year – it is clear that most will never have that opportunity. It should also be acknowledged that Australia has made important contributions to the international protection regime as part of its overseas aid program, including recently in relation to Syria.

Notwithstanding their varied views on the effectiveness of Australia's current policies and the conditions needed to stem the arrival of asylum seekers by boat, roundtable participants believed that a strong case could be made for increasing Australia's annual resettlement numbers. An increase could be set either as a fixed percentage of

the total annual migration intake, or as a fixed number, whichever is higher. The current humanitarian intake of 13 750 constitutes less than seven per cent of the annual migration intake of 190 000. The humanitarian intake could be increased to 25 000, or no less than 15 per cent of the annual migration intake.

The changing approach to asylum and refugee policy

Groups	Number of people
Total forcibly displaced worldwide	51 200 000
Under UNHCR mandate	11 700 000
Estimated to require resettlement	800 000
Worldwide resettlement places	86 000
Australian resettlement places	13 750

Source: UNHCR 2014 & McAdam 2014

(b) negotiate orderly departure arrangements to allow particular cohorts of asylum seekers to leave their countries in a safe manner.

The development of *orderly departure arrangements* has been used successfully by Australia in the past to enable particular cohorts to leave their country (or a transit country) in a safe and dignified manner, rather than engaging in self-help measures (such as getting on boats).

When the international community negotiated orderly departure arrangements with Vietnam under the Comprehensive Plan of Action in the 1980s, the motivation for informal migration, including people smuggling, was greatly reduced.

Most recently, the Obama administration has announced that it will implement orderly departure out of Central American countries to alleviate the flow of unaccompanied children crossing into the United States.

Drawing on these experiences, Australia could work with both source and transit countries, such as Afghanistan and Sri Lanka, to develop orderly departure arrangements to complement the refugee resettlement program. In this way, the pressure for informal migration could be reduced, and safer and more orderly migration channels could be opened up.

(c) consider using the Special Assistance Category visa for identified vulnerable displaced cohorts.

Australia might also consider targeted use of the *Special Assistance Category* (SAC) visa. In 1991 Australia introduced the SAC visa, which allowed for the resettlement of people or groups determined by the immigration minister to be of special humanitarian concern to Australia and in real need. SACs were used over the next decade to provide a resettlement pathway for ten groups, including Soviet minorities, citizens of the former Yugoslavia, Burmese, Vietnamese, Cambodians, Sri Lankans and Sudanese.¹³

None of these pathways for humanitarian resettlement represent a silver bullet for the number of displaced people in the world. Australia cannot accommodate all those in need of protection, but can play a significant role in alleviating the pressure in the system. The pathways explored briefly above provide a sustainable platform on which to do that.

9.1.2 Ensure processing is fair, transparent and effective, wherever it takes place

The roundtable discussion focused on processes that are common to all asylum seekers irrespective of where they are located and processed (whether in Australia or offshore). There was broad agreement among participants in the roundtable that Australia must work cooperatively with its regional neighbours to devise safe and sustainable strategies that promote the creation of viable protection spaces until durable solutions are found. The point was repeatedly made by roundtable participants that wherever processing takes place, it must be fair, transparent and effective.

As long as people are being processed fairly and promptly it doesn't matter where they are being processed if it was Malaysia or Indonesia or Nauru or Thailand or the Philippines or wherever, it has to be done with appropriate safeguards in place that guarantee human rights standards, proper processing, fairness, good service provision, education for kids, vocational training for adults, and independent monitoring and oversight. Anything we recommend has to have those elements in place in order to make it sustainable.

Roundtable participants also noted that the integrity of any refugee status determination system relies on timely and transparent processing. It is easier to ensure the return of unsuccessful asylum seekers if their claims are processed promptly. Research indicates that if asylum seekers have confidence in the fairness and effectiveness of the refugee status determination process, they are more likely to be cooperative with authorities and less likely to abscond before or after the process is completed.¹⁴

Historically, Australia's refugee status determination processes have been regarded as among the best in the world, with well-trained decision-makers, independent merits review and judicial review, and funded legal assistance for those who required it.

In recent years, successive governments have assumed that Australia's high-quality refugee status determination system has acted as a 'pull' factor. Roundtable participants sought to dispel this idea, noting the research shows that this is rarely a factor that influences asylum seekers' decisions about where to go.

Australia does have a very high recognition rate for asylum seekers arriving by boat. But it is very similar to the recognition rate that UNHCR has in many centres including Indonesia. A high recognition rate does not necessarily mean that these people are not refugees and properly determined to be so. That may be so for a whole range of reasons including things such as Australia's geographic location and the fact that they are different cohorts from the boat people in other parts of the world.

Legislative, executive and policy changes in recent years have impacted significantly on asylum seekers' ability to apply for (and receive) protection within Australia. Lengthy delays, curtailed processes and restricted access to legal assistance are just some examples.

Currently, asylum seekers who arrive in Australia on a valid visa are able to access legal assistance at the primary stage of decision-making, but not at the stage of merits or judicial review. Asylum seekers who have arrived in Australia without a valid visa are no longer entitled to access this service.

Roundtable participants noted that asylum seekers should have access to legal assistance regardless of the manner of their arrival. Access to legal assistance facilitates a more timely and efficient refugee status determination procedure for all concerned:

Many people from different cultures have difficulty handling the process and so representation is important.

If you give people legal assistance, lawyers can assist people and triage cases so that the courts' resources are not overburdened by judges having to get their heads around the ins and outs of claims made by people who are unrepresented.

Some participants welcomed more creative thinking about how other visas or schemes might be utilised to enable people whom are found not to have an international protection need, but who have a compelling humanitarian need, to migrate lawfully to Australia.

We need to think about different ways of using our other migration programmes, which are all pretty inflexible at the moment. I think we need to work regionally in terms of looking at ways of providing effective protection and options for people to come to Australia in different ways, including to work.

For example, the Canadian government is currently considering a scheme in which recently arrived, employment-ready refugees are placed in low-skilled jobs that would otherwise be filled by foreign workers.

This will enable Canada to increase its annual quota of resettled refugees while meeting labour shortages in low-skill, low-wage sectors.

9.1.3 Speed up processing for specific cohorts from source countries where there is an objective protection need

It was suggested that processing could be expedited for specific cohorts of asylum seekers, especially groups typically found to need protection. This could be a way of quickly resolving some of the backlog of claims within Australia, and could also be used as an approach going forward with key source countries.

If you take a caseload specific approach – for example if all Hazaras in Australia are going to be recognised as refugees, why not automatically offer them a form of protection? In those circumstances they could be given a set of specific rights. There is a lot of talk at the moment about accelerated procedures. We tend to think of accelerated procedures as a mechanism for getting rid of people. But it is possible to use accelerated procedures to improve the plight of people as an efficient way of including people.

Of course, individuals would still be subject to the usual health, identity, character and security checks, and if there were strong evidence that a particular individual from a nominated cohort did not in fact need protection, then the presumption could be displaced.

On balance, this process would be much faster than full refugee status determination interviews for every individual, and would also reduce the amount of time that asylum seekers would need to spend in detention or on bridging visas with limited entitlements.

Roundtable participants stressed, however, that accelerated processes for granting protection are very different from accelerated processes that seek to remove people (such as the ‘enhanced screening’ and ‘fast-tracking’ mechanisms proposed by the government). This is because the consequences of removing an asylum seeker whose protection needs have not been properly ascertained may be very serious, and may lead to violations of Australia’s *non-refoulement* obligations.

9.2 Conditions and Treatment

9.2.1 Swiftly determine unresolved claims and improve conditions for asylum seekers in Australia, including appropriate work rights

Of the 33 497 people who arrived by boat during the period 2008–13 and whose immigration status is unresolved, about 5757 are in closed detention centres and 27 538 in community detention, including 24 702 with a bridging visa. Those in community detention are able to live in approved housing and receive minimum financial assistance from the government for living purposes. Those who arrived after 13 August 2012 – the majority of the caseload – are unable to work to support themselves. All live with constant uncertainty about their future prospects. This is cruel and a waste of human capital.

There was broad consensus at the roundtable that harsh living conditions in Australia have no continuing deterrent effect on people seeking to come to Australia by boat. The suffering endured is no credible deterrent. The backlog of claims (created by the Australian government's suspension of processing) means that it may take at least three years before these cases can be finally determined. Roundtable participants believed most Australians would support the view that if processing is going to take time, asylum seekers should be able to live in the community, have work rights and be treated with dignity.

Being able to work is fundamental to a person's sense of self-esteem and worth. One of Australia's greatest achievements historically has been the rapid integration of migrants and refugees into the community, and the avoidance of long-term social dislocation by new arrivals. Our current policy approach runs the real risk of alienating and excluding a group of people from the economic life of the community over the longer term. Asylum seekers should have access to basic facilities and appropriate work rights, which may require an application process or certain eligibility criteria to be met. In this respect, creative linkages between rural communities needing labour and newly arrived asylum seekers could be established to yield economic as well as social benefits.

I am proposing, with regard to work rights, a simple measure that does not sit entirely comfortably with me and probably others in the room. But there is not even a system where people can apply for work rights. So if someone met certain conditions and had a prima facie case for refugee recognition and would be prepared to work in a regional area where there are employment openings, where they were in a position to cooperate on information and identity documentation and so forth, why could there not be a process where they could apply for work rights? And if

they satisfy certain preconditions – it is not a blanket open-ended door to employment – and someone in that department could make a determination that this person meets all these criteria so that they could have work rights. What would be so difficult about applying a system like that as opposed to making a universal blanket approach that says no work rights whatsoever. That is leaving people destitute and causing long-term difficulties for them.

9.2.2 End mandatory detention, except for initial health, security and identity screening

There was agreement among roundtable participants that beyond being used for initial health, security and identity screening, for the shortest possible time, mandatory detention serves no useful purpose and is ineffective, expensive and cruel. It was noted that research has shown that mandatory detention has little or no deterrent effect on asylum seekers. Moreover, there is a large body of evidence demonstrating that detention can cause severe and long-term trauma, mental illness and physical impairments.

The consensus was that Australia's system of mandatory detention should be abolished. It has been found to breach article 9 of the *International Covenant on Civil and Political Rights* (ICCPR) (the prohibition on arbitrary detention), and in some cases to constitute cruel, inhuman or degrading treatment or punishment contrary to article 7 of the ICCPR.¹⁵

It was broadly agreed that asylum seekers awaiting resolution of their status should be allowed to live in the community. Detention would only be permissible if there were clear evidence that a particular individual posed a security risk, and such detention were subject to judicial review.

9.2.3 Ensure refugees in offshore processing centres have access to durable solutions

The urgent resolution of the status of asylum seekers already transferred to PNG or Nauru is imperative. They are in a different situation from those in Australia because the Australian government has made it clear that they will never be resettled in Australia. It is believed that this decision has acted as somewhat of a brake on people smuggling and the arrival of boats (although roundtable participants acknowledged that the lack of transparency about ‘on water matters’ means that it is difficult to ascertain this with any certainty).

There are a smaller number of asylum seekers in PNG and Nauru (2317) compared to the caseload in Australia. Although there are some differences between their circumstances in PNG and Nauru, both groups are detained in conditions that the UNHCR has described as ‘harsh’ and which place emphasis on promoting return to the country of origin. Given the unique problems of confining people in very difficult locations in PNG and Nauru, there is a strong case for decisions on asylum claims to be made more quickly than in Australia. Roundtable participants believed that a reasonable time frame might be for all decisions on refugee status to be made within one year.

Although the processing of asylum claims is a matter for PNG and Nauru, asylum seekers are only there by virtue of Australia’s creation of offshore processing. As a matter of international law, Australia retains responsibility for their care and remains jointly and severally liable for any breaches of international law relating to their treatment. Australia must therefore ensure that processing arrangements are fair, effective and transparent, especially since there is a real risk that if processing is not done properly, *refoulement* could occur.

It is reasonable to set timeframes for making decisions (including merits and judicial review). Failure to do so has negative effects on asylum seekers and heightens the risk of further disturbances in detention centres – with ultimate responsibility falling squarely on the shoulders of the PNG, Nauru and Australian governments. In any immigration context, if people are not engaged in ‘a process’ and if detention feels indefinite, frustration and despair quickly lead to extreme actions of desperation. Such events and their causes have been documented extensively.

Some roundtable participants expressed serious concerns about refugee status determination processes in Nauru and PNG, including about the capacity of local officials to conduct it in a fair and timely manner, given their very limited experience with refugees in these countries; the absence of a statutory framework for refugee status determination in PNG; and the conditions in which asylum seekers are held pending a decision. Long delays in processing have meant that some asylum seekers may feel pressured to consider returning home, a situation that could constitute constructive *refoulement*.

As the PNG and Nauru governments work towards the creation of a legal and administrative protection framework, it would be appropriate for Australia to work with them, and also with UNHCR if it is willing, on the development and implementation of a deployment and mentoring program to expedite the processing of asylum claims. For instance, deployments of NGO [non-government organisation] staff, working in partnership with UNHCR, have been standard practice in connection with processing in Australia’s offshore humanitarian resettlement program.

This facility could be employed either through an existing UNHCR Memorandum of Understanding (MOU) with NGOs or the development of new mechanisms which allow NGOs to play a part in assisting with assessment, processing and with mentoring of local officials. This is a way of building capacity to provide protection.

Roundtable participants stressed that Australia must work to ensure the availability and accessibility of real solutions for those in offshore processing centres, including local integration, resettlement and, where appropriate, return. In the context of connecting robust processing to durable solutions elsewhere, concern was expressed about the absence of adequate legal frameworks to sustain such solutions in Indonesia and Malaysia. Participants agreed Australia should continue to uphold its obligations under the *Refugee Convention*, and acknowledged the imperative of building regional capacity so that other, non-signatory countries are in a position to comply with its terms.

I want to respond to those who have said that the key thing is that processing should be fair and effective and that where it takes place is not such an important question. If the processing is to take place in countries such as Indonesia and Malaysia – and we have colleagues from both those countries here – which have no refugee legislation; they have no experience in processing other than the program implemented many years ago for Indochinese refugees. That process was essentially done by the Office of the UN High Commissioner for Refugees, working very closely with the national teams. I do not think it will work to suggest at this point in time that processing can easily be done in these countries. Processing has to be linked with solutions. If you are talking about resettlement of cases processed in Indonesia and Malaysia – cases that might otherwise have been an Australian responsibility – where are they going to be resettled?

There are very few resettlement countries in the world who will turn and say ‘we will take the burden off you Australia. We will take those cases to the US or Canada or whatever’. There are far fewer resettlement places in the world today than there is a need for resettlement and they are not going to turn their attention here. So any regional solution has to build in proper and responsible processing arrangements that are linked to solutions and resettlement. There also has to be a workable solution for those found not to be refugees with return or local settlement or whatever. There are many more complexities associated with this than simply the location of processing.

9.3 Regional and Community Engagement

9.3.1 Develop and fund a regional Track II dialogue

Roundtable participants believed a Track II dialogue on forced migration is a necessary condition for the success of an overarching national asylum and refugee policy and the development of a durable regional framework.

At times we have been seen to be suggesting that our neighbours in the region have no capacity; don't want to protect refugees; and that they are horrible places that do not serve any useful function. That in the long term is really counter-productive if Australia is serious about building up a regional protection framework. Of course we need to point out what the legal and practical impediments are to protection. But we must at the same time remain respectful in our dialogue about relationships with those countries.

Track II (or second track) dialogues are defined broadly as non-governmental discussions aimed at building relationships and exploring new ideas. Public officials attend in a personal capacity, not as representatives of their governments. They participate alongside academics, non-governmental organisations and civil society leaders. Track II dialogues are contrasted with Track I dialogues, which are official diplomatic activities between governments, often at Ministerial level.

The advantage of Track II dialogues is that participants are unburdened by official expectations and are encouraged to take part in structured and constructive processes of problem solving. The format enables participants to lift their sights and focus on what might be possible over the long term.

Track II dialogues have been successful within the Asia-Pacific at enhancing regional confidence and cooperation. Such dialogues can complement and feed into formal intergovernmental processes.

Three reasons in particular necessitate a specific regional dialogue on forced migration. Firstly, forced migration is a growing, not receding, phenomenon. Secondly, domestic approaches to asylum seekers and refugees have spill over effects regionally, and are intricately related to other aspects of foreign policy. Thirdly, the majority of countries in the Asia-Pacific region are not parties to the *Refugee Convention* or its *Protocol*.

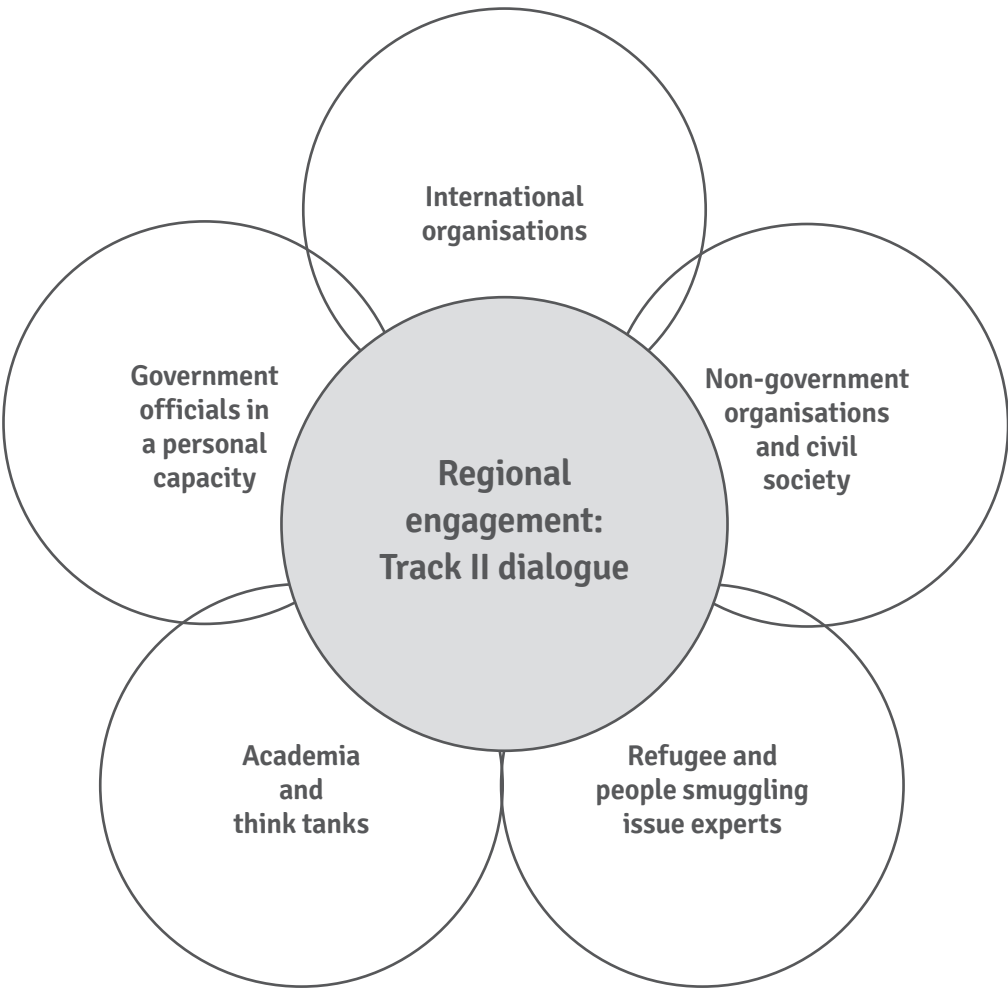
Countries that are parties typically have weak institutions for complying with the responsibilities they have assumed. A poor institutional and governance structure across the region persists for migration more generally.

Roundtable participants believed the absence of a Track II dialogue on forced migration is a sizeable stumbling block to developing a long-term regional framework. Existing dialogues have skewed towards deterrence or protection. Too often they have excluded government officials in related policy areas, including security agencies. They have approached the issues too narrowly, without considering other pivotal interests and concerns across the region. As a result, there has been no suitable forum for government officials, in concert with others, to discuss a comprehensive approach to forced migration.

Efforts have already been made to promote broader regional engagement, including by the UNHCR, the Asia-Pacific Refugee Rights Network, the Refugee Council of Australia and academics.¹⁶ We do not seek to reinvent the wheel, but would build on existing suggestions and strategies.

Below, we sketch out a working model for a proposed Track II dialogue and highlight similarities with similar but differently targeted processes, such as the Council for Security Cooperation in the Asia-Pacific (CSCAP), established in 1992.

Stakeholders in the Regional Track II dialogue



Source: Authors

Purpose	A forum for the exploration of new ideas and policy approaches regarding forced migration in all its dimensions, but with a particular focus on asylum seekers and refugees.
What	A collaborative and interactive dialogue to promote both inter-regional and intra-regional cooperation and discussion in a neutral environment. Issues could be wide-ranging, but would need to specifically address the creation of a regional cooperation framework, capacity building, people smuggling and approaches in countries of forced migration and transit.
The vision	The dialogue could foster and embed governmental and regional policies that enhance protection for displaced people, stabilise population movements, and tackle issues of smuggling and trafficking. Over time, this could lead to the development of a formal regional protection arrangement or instrument. It could also facilitate the development of a shared understanding and acknowledgement of the problem, and the role of diverse players.
Participation	<ol style="list-style-type: none">1. Experts from academia and think tanks, and other subject-matter experts covering law, migration, development, security/military and law enforcement disciplines, among others;2. International agencies, such as UNHCR, the International Organisation for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC);3. Governmental and law enforcement experts from immigration, border agencies, police and intelligence services, but acting in a private capacity;4. Non-governmental organisations (NGOs) and civil society representatives; and5. Ad hoc invitees for specific themes/issues, including those with first-hand experience of the matters raised.

How

Identifying key themes/issues, such as:

- a. the creation of durable solutions;
- b. maritime operations;
- c. a regional framework and capacity building;
- d. interception and law enforcement approaches;
- e. the development of alternative migration pathways to regularise status.

Part of the remit of the Track II dialogue would be to conduct a series of scenario-planning workshops identifying key issues, barriers and opportunities that could lead to new policy approaches and arrangements for displaced people, transit countries and host communities.

Benefits

The dividends of a Track II dialogue were canvassed in the discussion paper.¹⁷ Chief among them is the potential to foster trust between stakeholders and move the discussion of issues surrounding asylum, people smuggling and forced migration to a neutral and risk-free space. This will enable government representatives across the region to speak in a private capacity. The opportunity to ‘think aloud’ and ‘speak freely’ will allow new policy models to be uncovered and explored, ensure alternative perspectives across the region are understood, and facilitate the input of key stakeholders from outside government. Public discourse will benefit too, as a focus on facts and progress across the region takes the heat out of conversations previously hampered by suspicion and a lack of evidence. Roundtable participants believed this process could help to engineer a new regional framework that balances interests and responsibilities.

Relationships with other processes

If successful, the Track II dialogue could feed into the Association of South-East Asian Nations (ASEAN) and ASEAN Plus deliberations, as well as complementing the Bali Process. This would ideally be a formal relationship. The dialogue could also be a useful regional complement to UNHCR’s international deliberations with states and NGOs (such as Executive Committee meetings, NGO consultations and High Commissioner’s dialogues). Links should also be pursued with CSCAP given its enthusiasm for a broader security agenda and the need to extend that agenda to encompass the humanitarian dimensions of forced migration and trafficking. One benefit of collaborating with CSCAP is that its membership comprises key source, transit and destination countries. CSCAP also boasts links with ASEAN and its associated processes, including the ASEAN Regional Forum, as well as Institute of Strategic and International Studies Malaysia.¹⁸

9.3.2 Develop a sustainable regional framework

Participants recognised that building a robust regional framework is a long-term goal, but that we need to begin the process now. We should build upon the Bali Process and engage in constructive discussions with Indonesia and Malaysia about long-term strategies that will assist all countries in the region to manage asylum movements in a humane and effective manner. This would need to include the development of functional asylum structures and refugee status determination processes; the creation of durable solutions; and the development of responses to deal with those found not to be refugees (such as return where safe, alternative stay arrangements, or local integration).

While a functional regional framework will likely take many years to create, some more immediate strategies might be put in place in the meantime.

You can reach practical arrangements, especially I would have thought with regard to processing with respect to Malaysia and Indonesia, without having to wait for a perfect regional solution.

Some participants suggested that in some countries in our region, we could work towards better integration of existing refugee communities by enhancing legal status and rights there.

The 146 000 refugees and asylum seekers in Malaysia are not in camps, they are in urban areas, most of them are working, they have no permission to work but they are working because they have to. They are actually part of the Malaysian economy, they are part of Malaysian society, so we need to think about that in a different way. So my starting point would not be 'let's find a regional agreement', but let's start with incremental steps.

Let's start with a positive discussion with Malaysia about what can be done in a bilateral way to improve the conditions for refugees within their borders in return for the generous resettlement that we and others are doing. Let's talk to Indonesia about the implications of our policies on their country and how we can support them. And I think if we start to get involved in positive, honest steps forward to greatly improve protection for refugees then a regional dialogue will come out of that.

It was also mooted that Australia might create and fund mobile teams of refugee status determination decision-makers, which could travel to transit countries in the region to determine protection claims. These teams could be comprised of UNHCR protection officers, Australian decision-makers, or decision-makers from a number of countries. This would necessarily require the support of countries in the region, as well as considerable funding, and there may be jurisdictionally-challenging questions about what law would be applied, what review mechanisms would be in place, and so on. This might be an exceptional way of enhancing refugee status determination within regional transit countries, while those countries start to build their own internal protection and assessment capacity. It was emphasised that the use of mobile teams was not ideal, but it might be a preferable alternative to current policies such as offshore processing.

I think there are a number of areas where we need to recognise that it is not all black and it is not all white. There is scope for further exploration and for taking forward more efficient procedures.

Finally, there was recognition that funding for asylum seekers in transit countries should not be at the expense of foreign aid for community development more generally. This is why some participants emphasised the need for an integrated approach to policies on asylum, immigration, foreign aid and development.

At the time of the Cambodian boats, there was a processing centre for boat people on the Galang Island... But even a temporary centre had consequences for the local people. Houses were built for the boat people and the local people started asking 'what are you doing? You do nothing for our people but you are building houses for these newcomers'. That was a problem.

9.3.3 Foster a new national conversation about asylum seekers that engages all parts of the community

In 1959 – World Refugee Year – Prime Minister Robert Menzies addressed the Australian community:

It has not been easy for organised world opinion in the United Nations or elsewhere to act directly in respect of some of the dreadful events which have driven so many people from their own homes and their own fatherland, but at least we can in the most practical fashion show our sympathy for those less fortunate than ourselves who have been the innocent victims of conflicts and upheavals of which in our own land we have been happy enough to know nothing. It is a good thing that Australia should have earned a reputation for a sensitive understanding of the problems of people in other lands; that we should not come to be regarded as people who are detached from the miseries of the world.

I know that we will not come to be so regarded, for I believe that there are no people anywhere with warmer hearts and more generous impulses. This appeal therefore is at one and at the same time a challenge and an opportunity.

The generosity and warm heartedness that Robert Menzies took for granted in the Australian population can no longer be assumed. In particular, since 2001 – and the unfortunate confluence of 9/11 and the Tampa episode – maritime arrivals have caused growing alarm in the Australian community. This has been at a time when a number of conflicts and disturbances around the world have led to massive forced migration. A number of roundtable participants spoke about the concerns many Australians have about uncontrolled migration.

Fears about maritime arrivals have been politicised and oversimplified, and the Australian community has become increasingly divided into those who are for or against refugees. There is also much confusion about the distinction between asylum seekers, refugees, and economic migrants, which means that many views are formed without the benefit of accurate information.

There is no simple solution. A new national conversation needs to be championed by opinion leaders on both sides of politics. It needs to draw on the empirical evidence about the economic, social and cultural contribution that refugees have made to Australia.

There was support from roundtable participants for an initiative by participant Anne Kilcullen.¹⁹ She proposed the creation of community network to welcome and support asylum seekers and refugees, particularly in country towns and regional areas. They would be connected with communities who identify particular needs, such as a lack of workers or declining provision and demand for key services.

This could be a win-win opportunity, since local communities would be matched with asylum seekers or refugees whose presence and skills would be welcomed. This would be one way to break down prejudice, misunderstanding and confusion.

Finally, in rebalancing the conversation, it should be borne in mind that a rigorous and fair refugee status determination procedure is a vital part of the government's message to the Australian public. During the late 1970s, the Australian government assured the community that Indochinese boatpeople had all been through a robust determination process and the community was supportive of their resettlement. Today, the Australian government could promote refugee status determination in a similar way. This could help to replace negative and politicised language around this issue, and serve to quell misunderstandings in the community about asylum seekers.

10 Comments by participants in the roundtable

This section includes comments on the asylum seeker challenge by a number of people who participated in the roundtable.

The comments are an indication of the wide range of views.

The views expressed are those of the individuals and do not necessarily represent those of the sponsoring bodies.

Fred Chaney

A coherent, more humane refugee plan is in our self interest and it needs to come from the community.



The Hon Fred Chaney AO was a lawyer and a politician from 1974 to 1993. He served in the Fraser Government including as Minister for Aboriginal Affairs. His connection with refugee issues has been through his wife's direct work with refugees in the community and he has been a sometime advocate for refugee interests. He is Senior Australian of the Year in 2014, in recognition of his commitment to reconciliation and human rights.

I think it is realistic to imagine that we can get a new and better deal for the refugees who are in Australia now.

This is a highly politicised issue and I think change has to come from the community. I think you have to look for serious, well-regarded community voices to explain that it is in our self-interest to manage our refugee policy in a quite different way

The issue capable of amelioration in the short term is the treatment of the 34 500 asylum seekers currently in Australia, PNG and Nauru. The principles set out in the discussion paper are appropriate for dealing with this aspect and could command wide support in the Australian community.

Offshore, the additional point I would make is that it is essential to have transparency around what is happening as the only guarantee against oppressive and brutal behaviour. Avoiding cruelty (in a process meant as a cruel deterrent) should be a guiding principle onshore and offshore.

The larger issues relating to the worldwide refugee crisis also require acceptance in the Australian community, which leads to acceptance in the political community, that we need to work internationally and regionally to achieve effective approaches. Public opinion needs to be brought to this. That will only occur through new non-partisan conversations in the community.

Robert Manne

I have changed my mind about offshore processing



Robert Manne is Emeritus Professor of Politics and Convenor of the Ideas & Society Program at La Trobe University. He is a Fellow of the Academy of the Social Sciences in Australia.

The asylum seeker issue, or more accurately, the issue of those asylum seekers who arrive by boat, has been near the centre of Australian politics for the past 15 years. Opinion has generally fallen into two broad camps — the friends of the asylum seekers and their enemies. These camps have now become very rigid. Thought has become frozen. As happens when thought is frozen, dishonesty abounds.

The dishonesty of the enemies of the asylum seekers is familiar. They deny or diminish the human cruelty of their deterrent policies — mandatory indefinite detention; temporary protection visas; offshore processing; tow-backs to Indonesia. They close their eyes to the damage these deterrent policies inflict upon the reputation of this country, especially in the Asia-Pacific region where the White Australia Policy is remembered. Their attitudes, moreover, reek of hypocrisy. The enemies of the asylum seekers opposed the idea of deterring boat arrivals by sending 800 to Malaysia on the grounds that it was not a signatory to the United Nations Refugee Convention. They simultaneously advocated towing boats back to Indonesia, itself not a signatory to the Convention. In public, they shed crocodile tears about the hundreds of drownings that occurred under the policies of Rudd and Gillard. In private, despite the mass drownings, they were delighted with the political advantages the accelerated arrivals offered to the Abbott Opposition, as a WikiLeaks cable revealed.

Of more interest to me, however, is the dishonesty that I have witnessed among my former allies — the friends of the asylum seekers. From late August 2001, the Howard government introduced the policies of offshore processing on Nauru and Manus Island and occasional tow-backs to Indonesia, known as the Pacific Solution.

Between 2002 and 2007, virtually no asylum seekers arrived by boat. And yet throughout these years, almost without exception, the friends of the asylum seekers refused to admit that in its deterrent objective, the policy had worked.

In 2008, the Rudd government dismantled the Pacific Solution. Shortly after, the asylum seeker boats returned, eventually in much larger numbers than during the Howard period. Under Howard there were approximately 13 000 boat asylum seekers; in just the final year of the Gillard government some 25 000. And yet the friends of the asylum seekers rarely admitted that it was the dismantling of the Howard policies that was primarily responsible. Frequently the friends of the asylum seekers claimed that with firm political leadership the anti-asylum seeker sentiment of the Australian people could be turned. This denied the meaning of hundreds of public opinion surveys and flew in the face of common sense.

Most troublingly, the friends of the asylum seekers failed to register the moral meaning of the 1100 certain or probable drownings that took place under Rudd and Gillard. There was great anguish at the time of the mass drowning following the sinking of SIEV-X in October 2001, for which the Howard government was blamed. There has been even greater anguish following the recent terrible death of Reza Berati on Manus Island, for which the policies of the Abbott government have been blamed.

But among the friends of the asylum seekers, the mass drownings that took place under Rudd and Gillard barely registered or lingered in collective memory.

I frequently read articles by prominent friends of the asylum seekers berating the present policies of offshore processing and tow-backs where even the fact of mass death by drowning is not mentioned.

In their principled opposition to all forms of deterrent policy, many friends of the asylum seekers are wedded to a Kantian absolute — for them it is never permissible to save a greater number of lives by treating certain people, like those presently marooned on offshore processing centres on Nauru and Manus Island, as a means to an end. Others are legal absolutists, for whom, no matter what the consequences, it is never permissible for what they believe is the letter or spirit of international law, in this case the UN Refugee Convention, to be violated by a regime of offshore processing. Yet others are indifferent to the political dimension of the asylum seeker question. For them there is no problem for the Labor Party, the only opposition party that is a serious contender for government, to hand a permanent political advantage to its Coalition opponents. This position implies that in Australia today the asylum seeker issue should trump all other considerations, for example whether or not our country becomes involved in the most vital question of our era—the struggle to combat global warming. In my view, all these forms of absolutism—moral, legal, anti-political—are wrong-headed. On the asylum seeker issue many moral, legal and political questions have to be balanced and taken into account. The world is complex. Asylum seeker policy is inherently very difficult.

Because of their commitment to one or another form of absolutism, almost all friends of the asylum seekers now advocate the dismantling of the policy of offshore processing and tow-back, in other words a return to the policy of the Rudd government in 2007-8. Our only reliable guide to what might eventuate if they succeeded in their ambition is what happened in the past.

Following Rudd's abandonment of the Pacific Solution, three things occurred. The issue of asylum seekers helped undermine the government's popularity and served the interests of the Coalition. Asylum seekers arrived by boat in accelerating numbers — in 2010-11, 5 000; in 2011-12, 8 000 and in 2012-13, 25 000. Most importantly, in these few years, on their way to Australia, some 1100 asylum seekers died at sea. Those who now advocate the end of the current policy of offshore processing and tow-back, a policy that has quite predictably stopped the boats, need to explain why history will not repeat itself.

There is another consequence of the present position of the friends of the asylum seekers — by campaigning for the dismantling of offshore processing, they have abandoned any prospect of contributing to the formulation of a more humane and politically realistic asylum seeker and refugee policy. One aspect would be to look to conditions in the offshore processing centres and the ultimate fate of those presently there in such a way that suffering was diminished but the deterrent purpose maintained. The other would be to look to the future of the 30 000 or so recently arrived asylum seekers in Australia who are being treated with great cruelty by the present government. Some of these people are in detention centres. A larger number are on one or another form of bridging visa, waiting for their asylum seeker claims to be assessed. Some with adverse ASIO assessments have been imprisoned without trial for life. Many are living in penury. Many are not allowed to work. These people are promised that even if they are assessed to be refugees they will never be allowed to become permanent citizens.

Through the combination of these policies, Australia for the first time in its history has a government that is consciously engineering the creation of an immigrant under-class. As there is now an effective deterrent at the border, older ineffective domestic deterrent policies—like mandatory detention, temporary protection visas, absence of work rights or access to decent welfare services — are not only cruel but entirely purposeless. They are also quite predictably creating social problems for Australia in the future. All these policies should be abandoned.

It is, moreover, a misunderstanding to think that Australians are hostile to refugees. Historical experience and almost all opinion polls show that Australians are opposed not to refugees, but to those who arrive without visas by boat. It was more politically difficult for the Fraser government to accept the 2 000 Vietnamese spontaneous boat refugee arrivals than the tens of thousands selected by the government from the South-East Asian camps.

Rather than advocating the dismantling of offshore processing, the friends of the asylum seekers in my opinion could play a far more fruitful role by the advocacy of full human rights for those asylum seekers presently on Australian soil, and an annual refugee intake of 30 000 refugees chosen from among those in most desperate need, like the persecuted Hazaras of Afghanistan or the Rohingyas of Myanmar. This is the kind of policy that the Labor Party could realistically take to the next election. It is the policy for which I intend to fight.

These comments draw on a talk delivered to Limmud Oz in Melbourne, 8 June 2014. Limmud Oz is a Jewish Festival of Ideas.

Angus Taylor

The concerns of my constituents



Angus Taylor MP grew up in a farming family of cattle and sheep graziers. He excelled academically and after achieving degrees in both law and economics, was awarded a Rhodes scholarship to Oxford University. After university Angus returned to Australia to work as at McKinsey, one of the world's leading management consultants, where he was a partner. More recently he has pursued a career that has kept him deeply connected to regional Australia, both as a leading management consultant and in other businesses. He has helped establish and support many farming businesses and understands first-hand the daily challenges that small businesses and farmers face. He was elected to represent the seat of Hume in The House of Representatives in 2013.

I'm new to politics and I've door-knocked thousands of homes. I wanted to really understand the Australian psyche. I have always come at the refugee issue from the business point of view: we should have more immigration. But the one thing I learnt very quickly is that there is a clear and quite logical rationale to the way middle Australia thinks about this topic. And it's not politics. It's not popular stuff.

There is a fundamental belief here that we must understand otherwise we won't make progress. When we understand it, we'll make progress. At the heart of it is this notion that in Australia we must have control of immigration. We've had a lot of immigration, but we must have controlled immigration. People believe that if you have uncontrolled unskilled immigration, 'I'm at risk' – my economic and social mobility is at risk. That is right at the heart of the Australian psyche.

Now we can ignore that, we can say we don't like it, we can say that it's wrong, we can say it's immoral, but we will not change it. No one in this room will change it. So we must accept it. Having accepted controlled immigration as a starting point, we have a lot of license. But if we give up on that basic principle we are out of touch and we will not get to an outcome that the Australian people will accept.

I think the heart of it is, 'can I visibly see people coming to this country who risk my economic well-being?'. And it's why the position on this has been bipartisan. Not surprisingly the labour organisations feel very strongly about this. So I think if we understand that and show some respect for how mainstream Australia thinks, we can make progress.

Sam Dastyari

We must end secrecy



Senator Sam Dastyari was born in Iran to an Azeri father and Iranian mother, and arrived in Australia when he was five. His parents were student activists during the 1979 Iranian revolution. He joined the Australian Labor Party when he was 16 and served as the General Secretary of the New South Wales branch before being elected to the Senate in 2013.

Part of the argument for Operation Sovereign Borders is that it is a demonstration to both the Australian public, and the world, that the Abbott government is delivering what voters wanted. I know that many on the left of this debate are dismayed by this, but it is the reality, and it should not be underestimated.

However, I get the sense that the government thinks they don't have to give the Australian public any information about what is happening for this support to continue. As long as the government stubbornly insists on concealing what is happening, it will remain difficult for us to have a frank, informed and open policy debate about either our refugee policies, or border security.

Most of my constituent work is with the new and emerging migrant communities in Sydney. These first-generation migrants will have a profound impact on this political conversation in the future.

While I am not at all comfortable with the way the government is administering our offshore processing system, I remain in favour of the policy. The challenge – and it is a huge challenge – is how we can have a fair, transparent, and equitable refugee processing system that also ensures we retain the integrity of our borders.

Adam Bandt

We need to shift the community debate and change the policy focus



Dr Adam Bandt MP is Deputy Leader of The Greens and the Federal Member for Melbourne. He was elected in 2010 as the first Greens MP elected to the House of Representatives at a general election and was subsequently re-elected in 2013 with an increased vote. His PhD thesis looked at the recent trend of governments suspending basic human rights in areas such as migration, workplace relations and criminal law. He has taught industrial relations law at RMIT.

I feel quite strongly that there is another story to tell in this country, which is that everyone is only one or two degrees removed from someone who came here as a refugee. This includes their family, their workplace or the street. I strongly believe that with political leadership, a different story can be told that would change the way people think. I query the acceptance of the emphasis on arrivals by sea, especially in the context of other ways in which people are coming including by air. Telling stories about individuals and refugees in our community will be critical to changing the national psyche on this topic.

This Government's current obsession with deterrence and cruelty is misguided and as argued in the discussion paper, it is not an effective or sustainable strategy. We believe that Australia's response should be driven by protection, not deterrence, with a focus on regional cooperation with neighbouring countries. It is in Australia's interest to take the lead and work cooperatively with the region to develop a long term regional protection framework for those seeking protection.

Australia's response, to what is a global humanitarian crisis, should be consistent with Australia's obligations under the Refugee Convention and numerous international treaties to which Australia is a signatory.

To provide safer pathways for refugees and save lives we should;

- a. Increase Australia's humanitarian intake to 30 000. Within that, resettle an emergency intake of 10 000 UNHCR assessed refugees to Australia from our region to reduce the backlog and give refugees a 'regular' path to a safe life, including resettling at least 3800 directly from our immediate region, including from Indonesia, as recommended by the Houston Panel.
- b. Inject an additional \$70 million per year in emergency funding for safe assessment centres in Indonesia to provide shelter and welfare services to refugees while they wait for assessment and resettlement, and to boost the capacity of the UNHCR in Indonesia and Malaysia to speed up assessment and resettlement.
- c. Shut down all offshore detention in Nauru and PNG, with Australia to assess the claims of people who arrive by boat with a legislative time limit on detention
- d. Reverse the foreign aid cuts and inject aid into refugee source countries.

Erika Feller

Australia should see the real priority as building a proper regional cooperation framework



From 2005 to April 2013, Ms Feller held the post of Assistant High Commissioner for Protection at UNHCR, one of its top four management positions. She was the initiator and manager of the 2001–02 Global Consultations on International Protection, which generated the Agenda for Protection, the internationally-endorsed ‘global roadmap’ on protection policy. She has recently been appointed a Vice Chancellor’s Fellow at the University of Melbourne and a Fellow of the Australian Institute of International Affairs.

I would support a process which incorporates alternatives to refugee status determination (RSD) for those for whom the asylum process is not the right avenue to address their needs. Temporary protection arrangements, for one, can be made to responsibly and compassionately coexist with full RSD, as can facilitated return arrangements. There are interesting arrangements being put in place, or currently being considered or advocated, in often rather surprising contexts, such as in Iran in relation to the Afghan new arrivals, or in Sudan for the recent arrivals of South Sudanese, which bear analysis.

The idea of bringing the Asia-Pacific region into a more strategic dialogue around common protection and asylum goals is to be supported, but with an emphasis on genuine and equal partnerships and on the basis of a lessons-learned analysis of past and on-going efforts in this regard, which by and large have been less than positive.

I have visited many refugee situations and I have met with many governments that are confronted by huge refugee problems in their territory. I have had government ministers say to me: ‘You are an Australian; don’t come and preach to us. Go back and see if you can get your own country in order before you tell us what to do.’ It has not always been easy being an advocate for refugee protection and at the same time an Australian in the current international environment.

I would like to see the debate depoliticised. I would also like to see it de-dramatised. There is no ‘solution’ to this problem at the present time. What is required is a better management strategy, and we need to identify what are the ingredients of such a strategy. One element has to be a more enlightened, effective and compassionate system of onshore processing. This can co-exist, under clearly defined circumstances, with regional arrangements which could include some offshore processing, as long as the system is not prolonged and is fair, and people are treated humanely pending the decision. I remain of the view that processing people in PNG and Nauru is problematic to say the least. I would like to see us try to identify what would make it possible to have fair, proper regional processing arrangements, coupled with a more cooperative and coordinated approach to solutions, including resettlement.

I am aware that Indonesia and Malaysia are spoken about as possible hosts for a regional processing arrangement. One obvious problem is that these countries have no legislative underpinning for RSD, and little direct experience with it, other than the program implemented many years ago for Indochinese refugees. That process was essentially done by the Office of the United Nations High Commissioner for Refugees, albeit working very closely with or through national taskforces.

At this point in time, RSD cannot easily be done in these countries, meaning that there would be no alternative other than for UNHCR in effect to handle it. But UNHCR is currently a seriously stretched organisation. There are some 51 million people displaced globally, according to the latest statistics. The organisation now has an under-funded budget and is unable to find the needed funds for some of the major displacement emergencies like Syria, Iraq or the Central African Republic. Processing in Indonesia or Malaysia would likely not be a priority for the organisation, and in any case raises questions of State responsibility for which UNHCR cannot be an effective or long-term substitute. I accept there are no easy solutions and that saving lives at sea is a fundamentally important objective. Not 'stopping the boats' but how to build a proper regional cooperation framework should be seen by Australia as the real priority.

David Corlett

Protection of people in fear of grave human rights violations needs to be central to any discussions, agreements or arrangements



David has been involved in refugee/asylum seeker issues for about two decades, as a caseworker, researcher and academic. He has written widely on the issue and was the host of SBS's acclaimed Go Back To Where You Came From.

The boats appear to have stopped or slowed dramatically. While significant ethical concerns remain regarding the Government's 'external deterrence' policies and practice, they are here to stay; both major parties are committed to them.

There may now be an opportunity to consider a more rational and bipartisan response to refugees and asylum seekers that enhances protection throughout the region and the world. Such an approach needs to be politically achievable while protection against persecution and grave human rights violations must be central.

The two residual caseloads of asylum seekers – those in Australia and those in the offshore processing system – need to be resolved. Because of the contexts in which they each arose, their resolution needs to be understood to have different political and policy meanings.

The 30 000 in Australia are the result of the previous, unsuccessful policy of 'internal deterrence'. It is possible to allow this cohort to live under better conditions while their cases are being processed without doing any damage to the external deterrence regime that, on its own terms, has been so effective. The processing of their protection claims should occur as quickly as possible.

For those in the offshore system, the situation is somewhat more complex because their plight is a significant part of 'stopping the boats.' Any sense that the Government's line is 'softening' could be seen as a signal for a resumption of people smuggling, thereby resulting in more boat arrivals and more deaths at sea. For this reason, the people in the offshore processing system need to be dealt with humanely and fairly, but in a way that is not seen to erode the policy, including the perception and reality of uncompromising harshness.

There is a need for fair, timely and accurate protection determination processes, humane and safe living conditions and realistic resettlement options. Resettling a significant number of these people in Nauru or PNG is unrealistic, so reasonable alternatives need to be found. Those not in need of international protection should be assisted to return to their countries of origin.

Australia should now increase its humanitarian resettlement program substantially. This would indicate a genuine commitment to international protection in the face of policies and practices that look to the world to prioritise domestic politics over international obligations. Offshore resettlement will need to balance seeking to address those refugees with the greatest needs and Australia's strategic aims, including encouraging regional cooperation on these matters.

A comprehensive approach to refugees, including bilateral and multilateral agreements and a significant commitment of resources commensurate with our relative wealth is important, including as an indicator to our regional neighbours and others that Australia is serious and committed in these matters.

Ian Macphee

We should work from the grass roots up to persuade our major political parties to debate this issue in an informed manner with the public



The Hon Ian Macphee AO is a lawyer and former politician who was a member of the House of Representatives from 1974 until 1990. He was Minister for Immigration and Ethnic Affairs from 1979–82 where he presided over Fraser Government policy on refugees from Indochina.

I strongly endorse the proposals for change that have been presented here. I believe that if debate is conducted rationally, the public will overwhelmingly support recommendations for a new national plan such as has been outlined at this meeting. Refugees have mostly settled easily and been welcomed by those working with them or living near them. I witnessed that in rural Victoria even when paranoia was at its peak. But without direct contact with refugees, most Australians are saturated by petty politics and media and our major political parties have ceased to engage in public debate on the issue of due processing of asylum seekers, and to explain the benefits to Australia of a multicultural settlement process.

UNHCR is crucial to the resolution of the problems. That was the key to our success with the Indochinese refugees, which was under their supervision. Somehow we have got to make a contribution to strengthen the resources of the UNHCR.

I live in the electorate of Macmillan – an electorate that always went with the government of the day. When Russell Broadbent who holds the seat crossed the floor six times against Howard on the refugee issue, he won with an overwhelming majority in the election – when Howard lost his own seat as well as government. It indicates how the public feels when they see a principled stand on this matter.

When the public is genuinely aware of the issues, they empathise with people who have fled tyranny and they help them to integrate in the way that has been mentioned. We have to get out and make sure that there is more grassroots activity. I am sure that it is also important to make use of the Senate. But we also must support the amplification of UNHCR.

It is asserted that the ‘stop the boats’ policy has politically succeeded. And that we have to build now on that base. So what is the next step, given that there are all these refugees all over the world who have to be processed somewhere? We need to begin with the politics, and we have some politicians here who care about this issue.

Anne Kilcullen

Welcoming refugees as a win for communities and regional areas



*Anne Kilcullen's family background was in semi-rural North Queensland; she was an infant wartime evacuee from Cairns. She holds a PhD from the University of Toronto. She spent 30 years at CCH Australia Limited editing tax and business law publications. Anne's essay, 'A Win-Win Welcome', was included in *Refugees and Asylum Seekers: Finding a better way, Australia21, 2013*, at pp 67-70. She is now working on building a website at lincs.net.au.*

I support all the recommendations arising out of the roundtable. I would particularly highlight an increase in the annual humanitarian intake and the provision of work rights for those awaiting resolution of their status. Fast-tracking provisional resolution for specific groups such as Hazara and Rohingya seems a very good idea. I hope to help with fostering a community-wide conversation through the website I am building.

Any consideration of the recent suggestion of Safe Haven Enterprise Visas should draw on the past experiences that were taken into account in the proposed network of supported local regional or community integration centres.

In my proposal, a community decides for itself what it wants to achieve. It develops a proposal or tender stating the numbers and characteristics of people it is willing to welcome and the resources this will require. Some needs stated (e.g. for a reliable power supply or all-weather access) may not be directly related to the arrival of newcomers, but still desirable as infrastructure. (LOCAL)

The community submits this tender to a board or panel with access to a database which shows the age, gender, family grouping, skills, carer experience, musical talents, sporting interests, language, etc, of newcomers willing to be settled in such a place, and undertakes to match newcomer groups to welcoming communities. (SUPPORT A) The process of matching and settling newcomers operates under clear principles of prudence, fairness, and social and environmental sustainability. (INTEGRATION) An independent panel, including an

Ombudsman, makes sure the essential principles are complied with. (SUPPORT B)

Funds to supply the community resources required may be provided by any or all of the three levels of government, or by philanthropy, or by crowd-funding, or other means. For instance, the local group might develop an enterprise that could be the focus of a Social Impact Stock Exchange investment or a Benefit Corporation. Grants could be made in some cases; in others, an enduring fund might provide a series of revolving low-interest loans. (SUPPORT C)

There are many welcoming groups throughout Australia, but louder, harsher voices drown out their story. I propose a NETWORK of communication, beginning with a website, that will encourage local groups and enable them to learn from one another. When the faces, the lives, the stories of newcomers are seen and heard, barriers are often broken down. Music, documentaries, and biographies provide a wealth of resources. You-tube videos demonstrating recipes or textile-making or dance performance could help people to relate at a practical level and maintain newcomers' pride in and attachment to their home cultures.

The present outlook seems dark. But I believe a grassroots movement along these lines could, little by little, bring about a change in people's attitudes and ultimately in public policy.

David Lang Youth roundtables have called for new leadership on this issue



David Lang is an Analyst at the Australian Strategic Policy Institute where he researches on non-traditional security and the Asian security environment. He has served stints with the Australian Permanent Mission to the United Nations in Geneva and the Australian Institute for International Affairs. He holds a Bachelor of Business Management from the University of Queensland and a Master of International Relations from Griffith University. In May 2014 he co-convened a 'Youth Roundtable on Refugee and Asylum Seeker Policy' for YoungA21, the youth arm of Australia21. These are his personal views.

There is a dearth of positive political leadership on the asylum seeker issue in Australia with the policy debate and public discourse often imbued with a damaging rhetoric. While 'stopping the boats' serves a domestic political purpose and saving lives at sea is a morally positive corollary, this approach doesn't represent a valuable Australian contribution to the management of regional or global asylum seeker flows. A strong leader must recast the issue; asylum seekers should no longer be misrepresented for political gain. In my experience, many young Australians are similarly disappointed with the state of affairs.

Australia21 coordinated two youth roundtables – in Canberra in May 2014 and in Sydney in July 2014 – to give young people aged 18-30 an opportunity to contribute their views on refugee and asylum seeker policy settings in Australia.

At the Canberra roundtable, sadness, concern and anger were expressed at Australia's treatment of refugees and asylum seekers. Participants noted that a priority should be placed on the mental health of asylum seekers in all forms of immigration detention. It was emphasised that policymakers and the public should be encouraged to reframe current thinking on refugees and asylum seekers and be more open, sincere and unprejudiced in their conversations on the issue. Calls were made for 'grown-up' and progressive leadership, and for Australia to be more cognisant of equality under the law and of our moral and international obligations.

It was suggested that attention be focused on more appropriate and creative solutions to domestic processing, especially in terms of location and speed. In an ideal future imagined by roundtable participants, offshore processing facilities would be closed with the savings funnelled into local communities in order to support their greater contribution to the resettlement of refugees and asylum seekers. There were strong calls for policy changes to ensure that asylum seekers have opportunities to contribute fully to society while their claims were processed, and indeed, this was seen to underwrite positive mental health.

The Sydney youth roundtable sought the views of young people from refugee and asylum seeker backgrounds. The overarching message was that the refugee journey is long and difficult. After arriving in Australia, most people need tailored support to settle successfully, particularly in communities where refugee status carries a stigma. It was acknowledged that some current policy settings seem designed to waste human potential and frustrate the settlement journey, rather than support it. People appeared to be resilient and energetic but sorely tried. Participants commonly expressed deep frustration with the inhumane ways refugees and asylum seekers are treated through restrictive policies, as well as the way they are often stigmatised in the media and by the public. There was a strong yearning to be treated and to live like other Australians.

Elenie Poulos

How we should respond to asylum seekers who arrive by boat is a deeply moral question that demands a moral answer



Reverend Elenie Poulos is a Minister of the Uniting Church in Australia and National Director of UnitingJustice Australia, the justice policy and advocacy unit of the Church's national council, the Assembly. She is the lead spokesperson on issues related to refugees and asylum seekers and has over 12 years experience as a refugee advocate. Elenie is the founding Chair of the Australian Churches Refugee Taskforce and a member of the World Council of Churches' advisory group, the Commission of the Churches on International Affairs. She is a doctoral student at Macquarie University studying religion, politics and human rights.

Over the years, Australian Christians have become increasingly concerned about how successive governments have responded to asylum seekers arriving by boat. For most Australian Christians, policies that relate to how we treat people seeking our help cut to the moral heart of our nation: as one of the most secure, stable and wealthy countries in the world, do we cross the road and avoid looking at the violence in the world or do we go out of our way to offer help, like the Good Samaritan did?

It is unacceptable that people should die on boats trying to reach safety and security. It is unacceptable that the world is so ridden with persecution, hatred and violence that people have no other option than to take such risky voyages. It is unacceptable that Australia should respond to people dying on dangerous journeys by punishing those who succeed, including children, in order to deny people smugglers their trade.

Australian governments are not usually known for their creative policy solutions and it continues to astound me how much creativity has surfaced in the development of such an extensive set of policies of deterrence and punishment – my personal favourite in terms of ingenuity, is the excision of the whole of Australia from Australia's migration zone.

The politicisation of such a deeply humanitarian issue has helped no-one. The boats have stopped but we will never know if lives have been lost elsewhere as a result, and while we have already seen two lives lost on Manus

Island, many more lives are being slowly decimated in our detention centres, in the centres on Nauru and Manus, and through the forced destitution and endless limbo that results from living on bridging visas with no right to work.

The politicisation of these matters has led to short-term policy solutions that ignore the realities of the global context, ignore our moral and legal responsibilities and inflict harm on already vulnerable people. But now that the boats have stopped, it is incumbent on all political parties to take a deep breath and shift their thinking to what could now be done to rebuild Australia's reputation as a good global citizen offering a positive contribution to the protection of refugees.

The recommendations from the high level roundtable are aimed at how we might begin this journey and set some important policy directions for the medium to long term. But alongside these important steps, it will be vitally important for our political leaders to change their rhetoric. Our public conversations must no longer be charged by three-word slogans.

People are forced to flee their homes because of persecution and violence; asylum seekers move through countries because they cannot find safety and security; they come to Australia seeking care and protection. These are ethical issues that demand moral conversations. The question must no longer be how do we stop them coming, but how can we help. This is the only appropriate conversation for us to be having.

Paris Aristotle

People who are waiting assessment in Australia should be able to apply for work rights



Paris Aristotle is Chief Executive Officer of the Victorian Foundation for Survivors of Torture. He has advised successive Australian governments about asylum and refugee policies for many years, including as a member of the Expert Panel on Asylum Seekers (2012) and Chair of the Minister's Council on Asylum Seekers and Detention.

Regardless of the rationale or objectives for implementing policies to manage asylum seekers, they should never be designed with the intention of preventing people from seeking protection. No policy framework should do that. You can design policy to try to prevent loss of life at sea and people smuggling as a part of that process, but it should not be designed to stop people seeking and applying for protection and having their claims processed fairly, properly and transparently.

Australia should concentrate efforts on building a regional cooperation and protection system so that people fleeing danger do not feel compelled to engage people smugglers and embark on life-threatening journeys to find safety. Any such system must enshrine human rights safeguards, meet basic needs (eg food, shelter, education, work, etc), entail timely access to fair determination procedures and timely access to durable solutions.

As a clear sign of our commitment to building a regional system and creating viable alternatives, we should increase our annual humanitarian intake immediately (eg to 25 000 places) and then additionally in coming years (eg to 30 000 places per annum over the next five years). In addition, further opportunities for timely family reunion of all refugees, regardless of how they arrived in Australia, should be implemented. If necessary, other streams of the immigration program should be considered to enable this to occur.

With respect to asylum seekers in Australia: there are no proper and acceptable policy objectives served by the delays in processing, prolonged detention, application of temporary protection visas (as a punitive measure), denial of family reunion and denial of work rights, etc. This also requires on-going, multifaceted advocacy.

I don't believe that at every point along the chain, the policy positions and interventions employed have to be punitive in order to achieve the goal of dealing with people smuggling. Establishing different, safer pathways for people is more effective and would ensure compliance with our international humanitarian obligations. Purely punitive, deterrence-based models are inevitably harmful to the mental health and well-being of asylum seekers and unavoidably breach our international human rights obligations.

It should be possible to develop a system for allowing work rights without creating a major pull factor (which has been the concern of successive governments). A system where asylum seekers can apply for work rights if they meet certain criteria and conditions should be developed. Some examples of how this could work (while acknowledging it needs further development) could include criteria such as: the person needing to have a prima facie case for refugee recognition full cooperation with the status determination process; willingness to work in a regional area where there are employment openings (although this should not preclude being able to work in metropolitan areas); etc. If a person satisfies the criteria then there should be a mechanism through which they can be granted work rights.

The current system is leaving people destitute and causing long-term difficulties for them and welfare agencies.

While I am not opposed to temporary protection visas in appropriate circumstances, I think it is objectionable and unethical to utilise them primarily for punitive purposes. When used as a strategic tool in particular circumstances, as the UNHCR has proposed in the past, temporary visas can serve a strategic purpose. For determination basis, such as we did with the Kosovars and East Timorese in 1999. Governments can determine that there is a situation that is dangerous and precarious and as a consequence they will deal with people initially by making a group determination and granting an appropriate form of temporary protection visas. However, any such system must also confer rights and entitlements that enable people to live as other citizens live, are not discriminatory, and include a reasonable timeframe for considering viable durable outcomes (established from the outset).

Given that there are millions of refugees and displaced people, it is obvious that Australia can't take everybody or ever hope to 'fix' this problem on its own. As a consequence, while being a crucial element, resettlement to a third country like Australia is not the silver bullet answer to refugee crises. Greater multilateral engagement is necessary to establish better strategies for managing refugee and mixed migration flows.

Having said this, if we develop a regional protection system and go into such a system saying we'll take 25000 or 30 000 people, and UNHCR believes the system is justifiable and sustainable, then other countries are also likely to take more (additional) resettlement referrals from our region.

However, other resettlement countries are unlikely to do so if it is designed to simply to fix our problem – such an outcome would only be viable if it is genuinely part of a proper international system.

I genuinely believe that the public support for a larger refugee program is underestimated. When the Expert Panel on Asylum Seekers, of which I was a member, recommended increasing the quota to 27 000 places plus 4 000 additional family reunion places (31 000 places in total) and \$140 million for a regional system, no one objected. There was not an outcry of opposition to those recommendations because they were presented in the context of a package that could manage the issue better. If presented in such a context, I believe the Australian public will support substantially increasing the quota of refugees and family reunion and investing in a regional system. Rather than the primary emphasis being to 'stop the boats', our approach should be framed in the context of protecting refugees properly, safely, in greater numbers and through a better managed system. That should be the basis on which we frame and present the policy. Dealing with people smuggling would therefore be just be one part of that overall frame of reference.

Libby Lloyd

We need to recover the recognition that this is a global problem that Australia cannot manage alone



Libby has worked on specific assignments with a range of UN agencies in various countries, including with UNHCR during the mass movements of people in Indonesia and Iraq. She has also worked in the Australian public service in the area of refugee policy and refugee determination, in the private sector and the community sector.

I have worked in this area of refugees and asylum seekers for some 30 years, firstly on the ground with Indochinese in Southeast Asia, and also in the Middle East based in Iraq. I have a very practical experience and understanding of how it is at the very first stages of a large people movement, as well as the processes of refugee status determination in countries of first asylum and in Australia. I am aware of the very effective process in place in the region during the Indochinese crisis where there was not just a regional, but a global, response at that time. I feel some optimism that we could get there again.

I hope we can encourage politicians to begin to see this current issue as not just a political matter, but as a humanitarian issue that we need to find our way through. We must change the public conversation, which at present avoids any explanation or analysis of the complexities of this very difficult issue.

It is quite clear that there is little deterrent effect left in many of the measures that are being applied to the asylum seekers who are currently awaiting refugee status determination on the Australian mainland – those on bridging visas in the community, in community detention or in mandatory detention. The long wait to be assessed for refugee status, coupled with the real difficulty for many of returning to dysfunctional countries such as Iraq, Afghanistan or Syria at this point in time, compounds the issue.

We are now caught up in a complex mix of administrative and policy responses, which leaves many in an unnecessary state of uncertainty.

We need to expedite processing as well as work seriously with countries of origin, countries of first asylum and countries in our region to develop a sustainable regional solution.

I think we can find a way through it. It's now at the point where we are locked in a long series of unsatisfactory responses. We must engage politicians, the media and civil society. We need to learn from things that have worked before. For example, we should take another look at the Community Refugee Settlement Scheme that helped the Indochinese integrate into our community and worked so well in breaking down antagonisms. I don't see why we can't do it again and why we can't embrace civil society as part of the solution.

John Menadue

Lifting the humanitarian quota, negotiating orderly departure arrangements and establishing a Track II dialogue



In business, John Menadue AO was formerly General Manager News Ltd in Sydney and CEO of Qantas. In government, he was Secretary of the Department of Prime Minister and Cabinet, Secretary of the Department of Trade and Secretary of the Department of Immigration and Ethnic Affairs. He was also Australian Ambassador to Japan. He is now patron of the Asylum Seeker Centre in Sydney and a keen blogger. He was the founding chair of the Centre for Policy Development.

I have not always held the view that asylum seekers who come to Australia could be transferred and processed in another country. I changed my mind on that when boat arrivals quadrupled as a result of the High Court decision and the collapse of the Malaysian arrangement. We have been on a slippery slope ever since.

At the peak of the Indochina outflow the largest number of people arriving by boat was 1423 people (in 1977–78). In the aftermath of the collapse of the Malaysian arrangement, it was almost 30 times higher. The result has been Manus and Nauru. UNHCR has a long history of support for the transfer of asylum seekers in appropriate circumstances but it has refused to support Manus and Nauru. Importantly, in my view any transfer arrangements must be supported by UNHCR and operated in cooperation with UNHCR. But we need to think again about total opposition to transfers and regional processing.

Also, to break through the present political impasse on this issue, we need to develop a ‘second track dialogue’ that can inform and influence the present toxic debate and political point scoring. We should also wind back mandatory detention, which is cruel, expensive and does not deter.

In summary, it doesn't matter where the processing occurs as long as it is fair and efficient.

Now that the boats seem to have slowed, the government should increase our humanitarian migrant quota to 25 000.

We need, as we did at the time of the post-Vietnam war flow of refugees, to negotiate orderly departure arrangements with ‘source’ countries, particularly Afghanistan and Sri Lanka.

There should also be new migration pathways for 457 sponsored visas to cover cases where the line between refugees and migrants is too hard to distinguish. Finally, we should put a peg in the ground to support a long-term, ‘second track dialogue’, drawing together politicians, academics, bureaucrats and others to build a long-term relationship and framework in the region, together with UNHCR.

Ellen Hansen

The golden rule in thinking about asylum policy



Ellen Hansen is currently the Senior Protection Officer for UNHCR's Regional Office in Canberra, which covers Australia, New Zealand, Papua New Guinea and the Pacific. She has over 25 years' experience in international law and policy. Her current duties include reviewing and making recommendations on policies and practices as they affect refugees, asylum seekers and stateless people in a diverse region.

In perspective: Forced displacement continues to increase worldwide, although refugees in 2013 represented only seven per cent of all international migrants, who in turn represented only three per cent of the world's population. Nearly nine of every ten refugees in the world live in developing countries. A small number of developing countries host the majority of refugees worldwide (in 2013, the order was Jordan (2.6 million), Palestine (2.2 million), Pakistan (1.7 million), Syria (1.2 million), Iran (0.9 million) and Germany (0.5 million)). Out of the 14–15 million people who are found to be refugees, we are able to resettle less than 100 000 a year worldwide, based on the available spaces.

We should ask ourselves: 'How would you like to be treated?'. If we can bear the golden rule in mind in dealing with individuals who come to this country, I think we can make progress.

Notwithstanding the fact that, overall, the numbers of asylum seekers and refugees coming to Australia are modest, even at their peak, the movement of refugees, asylum seekers and migrants by sea creates particular challenges for governments, and humanitarian concern for the individuals involved.

From UNHCR's perspective, the Refugee Convention remains the one convention that provides a universally and globally accepted definition of who is a refugee and who is not. And while it was originally negotiated in the context of World War II, it was subsequently extended in 1967 to remove historical and geographical limitations and it remains the foundation of an international refugee protection system.

There is an urgent need to provide asylum seekers who arrived by boat to Australia and who have not yet had their need for international protection determined, with access to fair and efficient process, with relevant legal safeguards built in. Community release should be further supported and underpinned by work rights, access to all levels of education and particular attention to the welfare of children. Those found to be refugees need a durable solution with the full rights of the Refugee Convention. For those who are found not to be refugees or otherwise in need of international protection, the effectiveness of return efforts should be increased.

Julian Burnside

The language around refugees needs to change



Julian Burnside is a barrister who specialises in commercial litigation, but who also does a significant amount of pro bono human rights litigation.

Australian politicians have created or exploited the suggestion that boat people are dangerous criminals from whom we need to be protected. It is false, and politicians should be exposed for creating or exploiting that falsehood.

As far as can be determined, we are spending between \$4-5 billion per year mistreating people. That is a startling idea but that's what we are doing.

It is really important to bear in mind the point that by signing the Refugee Convention, we have either ceded an element of control or we have decided as a country that it is a component over which we then exercise control with a rigorous processing system, but a system which conforms to the Convention.

We also need to engage with the community. But it is not consistent with respectful engagement if one side of the argument continues to call boat people 'illegal' when they are not; continues to jail them when they haven't committed any offence; continues to treat them as though they are dangerous criminals, when they are not; and continues as a matter of official policy to say that we need to be protected from them.

If we are going to have respectful engagement, let's make it clear to all. Because I think one of the difficulties in the situation at the moment is the distorted factual foundation on which many Australians hold the views that they currently hold.

It is an interesting fact that, late last year, I had dinner with a South African judge who expressed very blunt criticisms about our human rights record. The irony of that coming from a South African judge is quite striking.

Wiryono Sastrohandoyo

A view from Indonesia: We have a problem too



Wiryono Sastrohandoyo is the Former Indonesian Ambassador to Australia. During his career he was Ambassador to Austria, France and Australia. He is currently a Senior Fellow at the Center for International and Strategic Studies in Indonesia (CSIS).

Both Indonesia and Australia have been living with the issue of asylum seekers for a long time now. It well may be that the problem can never be fully resolved; it can only be managed—since the issue will not go away for as long as there are widespread conflicts in South and Southwest Asia that produce refugees, asylum seekers and displaced persons, and as long as Australia is perceived as the main destination that can provide them a safe haven and new opportunities in life.

Ideally, there should be full cooperation among three groups of countries: a) the countries of origin; b) the countries of transit, including Indonesia; and c) the destination countries, specifically Australia and New Zealand. Instead, the issue has become a source of irritation in the bilateral relations between Indonesia and Australia.

This has become such a highly contentious topic that Indonesia finds it difficult to be straightforward and objective in dealing with it. In fact, there is an inclination among sectors of both sides to address the grandstand instead of the issue itself. This is unfortunate because this is basically a humanitarian issue.

To Indonesia, Australia's pushback policy is not helpful and discourages Indonesia from working with Australia to address the issue of asylum seekers. The prevalent view in Indonesia is that we are helping Australia deal with a problem that belongs more to Australia, since Indonesia is only a country of transit. Indonesia is a stepping stone to their ultimate destinations, Australia and New Zealand.

And yet the issue is burdening Indonesia in many ways, while Australia is neither sympathetic nor helpful enough. There is therefore a strong feeling among the more perceptive citizenry that Indonesia is being victimized.

This feeling is strengthened by the fact that asylum seekers no longer have any real access to Australia, and yet there is very little evidence to suggest that there has been a significant drop in the number of people entering Indonesia illegally with the hope of eventually reaching Australia.

We can be helpful but our capacity is also limited. This is a complex problem and I agree that we need to have more cooperation. We also need to have more respect between nations. It is important that we have mutual respect because this is a responsibility that we share. I hope the discussions will go along that line. It is a regional as well as a global problem.

At the time of the Cambodian boats, we had a processing centre for boat people on the Galang Island... At that time, we had a very clear commitment that people who were processed would be resettled in a third country. So it was a temporary processing centre. But even a temporary centre had consequences for the local people. We built houses for the boat people and the local people started asking: 'What are you doing? You do nothing for our people but you are building houses for these newcomers'. That was a problem. If you are going to do something on a permanent basis, I don't know whether it can be done.

The name 'Operation Sovereign Borders' gives it the connotation of being a military operation. I think what we are talking about is a humanitarian job that needs to be done in a humanitarian way. If Indonesia is to cooperate with this operation I think it is very difficult. We are in a democracy and there are human rights issues at stake. It is very difficult for the government to be involved in these kind of operations. The unintended consequence will be more people coming to Indonesia because they are not able to go anywhere else. And you are just pushing them back. So I think this is not going to work with us from our point of view. It is too military in its terms and its implementation. Humanitarian issues should be dealt with in a humanitarian way. But of course it is very difficult. Because the more generous you are, the more people will want to come. That is the dilemma.

Steven C M Wong

Partnership with transit countries in the region are possible but you must recognise this is not just your problem



Steven Wong is the Deputy Chief Executive and a Board Member of the Institute of Strategic and International Studies (ISIS) Malaysia, with which he has been associated for 20 years. He is an economist by profession but has experience in public policy and international relations, particularly regional cooperation matters. He has worked in financial markets, management consultancy and carried out development projects for the World Bank.

Malaysia has excellent cooperation with Australia, which is why many things that are not possible with other countries are possible with my country. Having said that, the issues surrounding the Malaysia solution actually ended up leaving a fairly bad taste in the mouth of Malaysians.

There are presently over 140 000 registered refugees/asylum seekers in Malaysia, and the UN High Commission for Refugees (UNHCR) believes there are at least another 50 000 who are unregistered. There are at least 28 000 children (many more have not been registered) and numbers are growing. For a country of 30.5 million, this is a very sizeable problem. Add to this an illegal migrant worker population that is upwards of two million and it is easy to see how the problem can be said to have reached intractable proportions. Juxtaposed against these numbers, any talk of ratifying the Refugee Convention, instituting formal legislative and administrative arrangements such as protection visas and providing accommodation and ability to work are nothing more than theoretical. Policies and instruments are greatly restricted.

Those unfortunate enough to be arrested for contravening the Immigration Act are interned for processing at grossly overcrowded detention centres and prisons, held for the immigration offences committed and, after serving out their terms, deported. Those who manage not to get arrested have, like illegal foreign workers, a life on-the-run to look forward to.

They work wherever they can find it, are exploited and live in packed urban tenements or make-shift camps in jungle fringes. Were it not for efforts of non-governmental organizations and churches, they would be totally deprived of social services such as clinics and schools. Standards of protection and treatment of refugees, while improving at the margins, are still far below globally acceptable.

Except for small numbers of refugees from select countries, residence and naturalisation are out of the question. The vast majority have to live for long years in administrative limbo between deportation and, for the limited few, passage to third countries. All the while, numbers increase, encouraged no doubt by organised crime syndicates involved in human trafficking. In 2007, Malaysia enacted the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act but in June 2014 was still placed in Tier 3 of the US State Department's Trafficking in Persons Report.

Australia's aborted Malaysia Solution, which at first glance appeared to be a clever 'win-win' construct, was really never on and, in hindsight, the judgement of the Australian High Court was wholly appropriate.

The contrasts between Australia and Malaysia in the management of their refugee problem are stark.

Both are primary destination countries, while Malaysia is also used for transit purposes, a double jeopardy. At the risk of oversimplifying the problem, the numbers involved are dramatically different, with Malaysia not having the range of policy levers and ability to gain traction that Australia has. Welfare considerations rank much lower (if at all) in terms of policy priorities than coming to grips with more urgent governance issues.

Further, there is the assumption that countries in the region share Australia's asylum problem and have a role in resolving it rather than them viewing it as a purely Australian problem.

In my view, the types of regional cooperation agreements that are possible are going to be by and large responsibility light. The best way is to pursue the bilateral, and then to cement it at the regional level with whatever you can do. So I think there is still this opportunity but we need to have some definite ideas to take up at the bilateral level.

I fully agree that we have to deal with stabilisation in the source countries, deterrence in the transit countries and effective processing in the destination countries. In transit countries it has to be a combination of capacity building and cooperation. And I would suggest that you don't try and do responsibility sharing and cooperation all in the one go. So maybe you should try and disentangle things and listen to the issues in transit countries like Malaysia.

Oliver White

The need for cross-border and regional collaboration on refugees has never been greater, and Australia has the potential to play a leading role in the development of a regional response to forced migration in the Asia-Pacific region.



Oliver White is a refugee advocate currently working with the Jesuit Refugee Service Australia. He has over ten years of experience working in the youth, mental health, community development and refugee sectors, both in Australia and overseas. Most recently, Oliver returned from three years in Thailand where he held a regional advocacy and communications position with JRS Asia Pacific, working with displaced people in Cambodia, Indonesia, Thailand, Timor Leste, the Philippines and Papua New Guinea. Oliver holds a Masters in International Social Development, specialising in Forced Migration.

Australia can no longer ignore its duty in helping to establish an agreement that will ensure governments share the responsibility of displacement and provide safe pathways for the 8.4 million displaced people currently living in the Asia-Pacific region. While the country's Operation Sovereign Borders policy may have slowed the boats – as the Coalition promised to do prior to its election in 2013 – it has failed to solve the broader issue of the lack of protection for refugees further upstream in host and transit countries.

If Australia is to effect broad and long-term change, its core objective should not be to 'stop the boats'; rather, it should join affected states in Asia Pacific to develop a regional approach which manages the movement of people and provides durable solutions for those in need of protection.

As one of the most developed countries in the region, we are well placed to protect refugees and take the lead in establishing a regional approach to forced migration. It is essential that such an approach would place the protection of refugees ahead of national politics and border protection.

Australia should take the lead in establishing a standardised system of regional protection for refugees that is underpinned by principles of justice and compassion. Such a system should include at the barest minimum:

- The recognition of refugees as distinct from other migrants
- Earmarked funding to increase capacity to register and process refugees in the region
- The issuing of refugees with documents to avoid detention under immigration laws
- Temporary work permits and access to public utilities, including schools and hospitals
- Safe repatriation for those deemed not in need of international protection.

As part of a Regional Cooperation Framework (RCF), states' respective roles and responsibilities would be clearly defined, and clear mechanisms for accountability introduced.

Australia should play a leading role by increasing the number of refugees it resettles, on the proviso that other states in the region do more to protect refugees on their own territory. Incentives for host and transit countries that encourage local integration will increase protection space in the region and support compliance with international standards of protection.

It is most likely that the comprehensive RCF envisioned by the Bali Process will take shape organically over several years through a series of bilateral and multilateral agreements between states in the region.

These agreements can then be integrated, coordinated, and aligned to form a more holistic and comprehensive regional arrangement.

In the meantime, Australia needs to move beyond three-word slogans, knee-jerk policy prescriptions, and short-term political fixes - which do nothing to address the broader issue of irregular migration – and find pragmatic but principled alternatives to the status quo. It should form a bipartisan collaborative approach before engaging with other countries in the region, employing diplomacy and negotiating a system that prevents people smuggling but ensures refugees are protected and offered alternative pathways to safety.

Finally, there is no place for deterrence in a regional approach to managing the flows of refugees. If refugees moving through the region can have their claims for protection assessed in an orderly and timely manner, and solutions can be found for those who are refugees, then the harsh and punitive conditions in places like Manus and Nauru would be redundant.

Jane McAdam

Policy needs to be informed by and consistent with international law: We need to change the national narrative



Professor Jane McAdam is Scientia Professor of Law and Director of the Andrew & Renata Kaldor Centre for International Refugee Law at the University of NSW. She holds an Australian Research Council Future Fellowship, and is a non-resident Senior Fellow at The Brookings Institution in Washington DC and a Research Associate at the University of Oxford's Refugee Studies Centre. She is joint Editor-in-Chief of the International Journal of Refugee Law.

It is fundamental that international law underscores any approach that we take, given that it reflects obligations that Australia has entered into voluntarily. These obligations should guide Australia's actions wherever we exert control, and whether it is on our own or in conjunction with other countries.

We need to bear in mind that international refugee law and human rights law set a floor, and not a ceiling, in terms of the minimum standards that we are required to observe. At the heart of everything we are discussing lies the need for clear, transparent and effective refugee status determination procedures, both in Australia and offshore.

Historically, Australia has had one of the best refugee status determination procedures in the world. And yet we keep trying to reinvent the wheel in ways that are not productive. I would like to float an idea. I wonder, given the discussion we have had today at this roundtable about what is politically possible at present, whether there would be any capacity for Australia to create and fund mobile UNHCR refugee status determination teams in the region, or even – and this is where it could become jurisdictionally difficult – mobile teams of decision makers drawn from Australia (and possibly elsewhere). This could be an interim step as we start to develop true regional protection frameworks and build in-country capacity. It might lead to resettlement either in Australia or in other countries. I should emphasise that I offer this suggestion strictly as a compromise, based on the current political landscape.

A report prepared by Graeme Hugo for the Immigration Department a couple of years ago examined the long-term contributions of the humanitarian settlers of the 1970s and 1980s. It describes the success stories that have come from accepting refugees in Australia.

Changing the national narrative about refugees is not an 'either/or' about community engagement or political leadership. It is both. I think that the two will grow and complement each other. Both are vital.

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Participants in the roundtable dialogue

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Paul Barratt AO, Chair of Australia21;
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Dr Adam Bandt MP, Deputy Leader of The Greens; Member of the House of Representatives

Fr Frank Brennan SJ AO, Jesuit priest; Professor of Law, Australian Catholic University

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Dr David Corlett, Academic and host of 'Go Back to Where You Came From' (SBS)

Senator Sam Dastyari MP, Labor Party; Senator for NSW

Em Prof Bob Douglas AO, Retired epidemiologist; Director of Australia21 (Roundtable Chair)

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