

# Face the Facts

Question and Answers about Indigenous People, Migrants and Refugee

## Forward

Face the Facts remains the Human Rights and Equal Opportunity Commission's most requested publication. It was first published in 1997 and updated in 2001 and again in 2003. The demand for clear factual information about immigrants, refugees and Indigenous peoples continues. Indeed there is a particular need for information of this type at the present time when the public debate on race issues takes place in the context of national security concerns and terrorism. Never has it been more important to ensure that this debate is based on fact not fear or prejudice.

The 2005 edition of Face the Facts forms part of a number of publications issued by the Commission to celebrate the 30th Anniversary of the Racial Discrimination Act 1975. While the legislation has provided important and necessary legal safeguards for victims of racism over the past 30 years, addressing racism needs to go beyond the legal framework. Publications like Face the Facts recognise the importance of education in addressing racism and the importance of ensuring that the prevailing attitudes within the community are constructed on a sound factual base.



Face the Facts draws on information from a variety of sources. The information provided includes laws made by Australian Parliaments, government policies, statistics collected by the Australian Bureau of Statistics and academic research. Our aim is to bring all the major issues together and present reliable information in an easy-to-read publication.

I hope that you find Face the Facts to be a useful resource and that it stimulates your thinking and encourages debate based on fact not prejudice.



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## Face the Facts – Glossary

### **Aboriginal**

Comes from the Latin term '*ab origine*' which means 'from the beginning' and refers to the original inhabitants of a particular place.

In Australia, an Aboriginal person is someone who is of Aboriginal descent, identifies as an Aboriginal person and is accepted as an Aboriginal person by the community in which he or she lives.

### **Assimilation**

The process of absorbing or being absorbed into a group or system so that elements are the same. In Australia during the 20th Century, policies of 'assimilation' sought to make Aboriginal people and migrants the same as 'mainstream' Australian society.

### **Asylum seeker**

A person who requests protection in another country from persecution and recognition of his or her status as a refugee.

### **ATSIC**

The Aboriginal and Torres Strait Islander Commission (ATSIC) has been Australia's national representative Indigenous organisation. ATSIC advised governments on Indigenous issues, advocated for Indigenous people at the local, regional, national and international levels and monitored how other government agencies provide services to their Indigenous clients. ATSIC was directed by a Board of Commissioners elected by Indigenous Regional Councils, who were in turn elected by Indigenous people across Australia.

In May 2004, the Government introduced legislation to abolish ATSIC. ATSIC ceased to exist from midnight 23 March 2005. ATSIC's functions were transferred to mainstream government agencies.

### **ATSIS**

Until 2003, ATSIC was responsible for administering Aboriginal and Torres Strait Islander programs and making individual funding decisions. From 1 July 2003, this function was transferred to a new Executive Agency, the Aboriginal and Torres Strait Islander Services (ATSIS). ATSIC was also abolished by the Government in March 2005, and its functions transferred to mainstream government agencies.

### **Border protection**

The Australian government's policy of ensuring the integrity of Australia's borders and the effective control and management of the movement of people to and from Australia.



## **Community Development Employment Projects (CDEP) Scheme**

CDEP was run by ATSIC/ATSIS to enable Aboriginal and Torres Strait Islander communities to provide employment for their people. To take part in CDEP, members of a community choose to give up their social welfare entitlements from Centrelink. ATSIC/ATSIS offered grants to CDEP community organisations which then paid wages to participants undertaking community-managed employment activities. After the abolition of ATSIC/ATSIS, the CDEP program was transferred to the Commonwealth Department of Employment and Workplace Relations.

## ***Convention on the Rights of the Child 1989 (CROC)***

The United Nations Convention which sets out the way all human rights (including civil, political, economic, social and cultural rights) should be protected for children and young people. Australia adopted CROC in 1990.

## ***Convention relating to the Status of Refugees 1951 (Refugees Convention)***

The *Convention relating to the Status of Refugees* defines who is a refugee, specifies their rights and the legal obligations of member states towards refugees. A key provision of the Convention is that refugees must not be returned or '*refouled*' to a country where they fear persecution. The 1951 Convention was limited to protecting mainly European refugees in the aftermath of World War II. The 1967 Protocol expanded the scope of the Convention as the problem of displacement spread around the world. Australia adopted the Refugees Convention in 1954 and the Protocol in 1973.

## **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987 (CAT)**

The Convention defines 'torture' as an act perpetrated by or with the approval of government officials which is designed to inflict extreme physical and/or psychological suffering for a purpose such as extracting information. Member states must prosecute or extradite alleged torturers. Australia adopted CAT in 1989.

## **DIMIA**

The federal Department of Immigration and Multicultural and Indigenous Affairs.

## **Excised off-shore places**

Parts of Australian territory which have been removed from Australia's migration zone: Ashmore and Cartier Islands, Christmas Island, Cocos (Keeling) Island as well as various other off-shore sea and resource installations. Unauthorised arrivals who land at an excised off-shore place cannot apply for a visa. They are taken to a 'declared country' such as Nauru or Papua New Guinea where they are held while their application for a protection visa is assessed.

## **Family Stream migrants**

A visa category which allows people to migrate to Australia on the basis of their relationship with a sponsor who is a close family member and an Australian resident or citizen. Most Family Stream Migrants are the spouses or fiancés of Australian residents or citizens.



## Humanitarian Program

The part of Australia's permanent immigration program under which refugees and other people who need humanitarian assistance can apply to come to or stay in Australia on a permanent or long-term basis.

## Immigrant

A person who moves to another country with the intention of settling permanently.

## Immigration detention

Under the Migration Act people who are not Australian citizens and who do not hold a valid visa must be detained. While the law applies to people who overstay their visas and to people whose visas have been cancelled, the biggest group in immigration detention are asylum seekers who arrived in Australia without a valid visa.

## Indigenous

According to the *Convention concerning Indigenous and Tribal Peoples in Independent Countries* 1989 (ILO 169), Indigenous peoples are:

- Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Self-identification as indigenous or tribal is a fundamental criterion for determining the groups to which the provisions of this Convention apply. Australia has not adopted ILO 169.

## ***International Covenant on Civil and Political Rights 1966 (ICCPR)***

This Covenant translates the civil and political rights outlined in the *Universal Declaration of Human Rights* 1948 into firm obligations undertaken by member states. It covers the rights to equality before the law and to freedom from arbitrary arrest or detention, among others, prohibits torture and slavery and restricts use of the death penalty. Australia adopted the ICCPR in 1980.

## Land rights

In a land rights claim, Indigenous Australians seek legal ownership of land from Commonwealth, State or Territory governments. Land rights legislation was adopted in several States and the Northern Territory before native title was recognised by the common law in the Mabo Case.



## **Mabo Case**

A landmark legal case in which Eddie Mabo, together with four other Meriam people from the Murray Islands in the Torres Strait, proved they had native title rights to their land. There were two High Court decisions in this case.

*Mabo (No.1)* (1988) invalidated Queensland legislation which sought to remove the Murray Islanders' native title without compensation finding that it was inconsistent with the federal *Racial Discrimination Act 1975*.

*Mabo (No.2)* (1992) rejected the doctrine of 'terra nullius' - that Australia did not belong to anyone at the time of European settlement - and recognised that Indigenous people who have maintained a continuing connection with their country according to their traditions and customs may hold native title rights over that land.

## **Migration Program**

The part of Australia's permanent immigration program under which people can apply to come to or stay in Australia permanently on the basis of their employment skills or their family ties with a sponsor who is a permanent resident or citizen of Australia.

## **Migration zone**

The migration zone is made up of the land area of all the states and territories of Australia and the waters of proclaimed ports within those states and territories. The land area starts at the mean low water mark. The migration zone does not include the territorial sea that is off the coast of the Australian states and territories. The purpose of the migration zone is to define the area of Australia where a non-citizen must hold a visa in order to legally enter and remain in Australia. Anyone who enters the migration zone, including Australian citizens, must present themselves for immigration clearance.

## **Multicultural**

Describes the diversity of cultures and backgrounds that make up modern Australian society.

## **Multiculturalism**

Multiculturalism is a government policy that recognises and celebrates Australia's cultural diversity and seeks to address the challenges and opportunities arising from it. The main principles of multiculturalism are:

- Civic duty: all Australians should support the basic structures and principles of Australian society - our Constitution, democratic institutions and values - which guarantee freedom and equality and enable diversity to flourish.
- Cultural respect: all Australians have the right to express their own culture and beliefs within the law and accept the right of others to do the same.
- Social equity: all Australians are entitled to equality of treatment and opportunity enabling them to contribute to the social, political and economic life of Australia, free from discrimination on the grounds of race, culture, religion, language, location, gender or birthplace.
- Productive diversity: all Australians should benefit from the significant cultural, social and economic dividends that arise from cultural diversity.



## **Native title**

Indigenous peoples' rights to land or waters held according to their traditional laws and customs. First recognised in the common law in the Mabo Case and then implemented in legislation in the Native Title Act 1993.

## **Office of Indigenous Policy Coordination (OIPC)**

The Office of Indigenous Policy Coordination (OIPC) was established by the Commonwealth Government on 1 July 2004. On the same day, the programs and services administered by ATSIC and ATSIIS were transferred to mainstream government agencies. The OIPC is part of the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs and coordinates government services for Indigenous Australians.

## **'Pacific Solution' or 'Pacific Strategy'**

Australia's policy of transferring unauthorised arrivals who have entered or tried to enter Australian territorial waters to other nations in the region such as Nauru and Papua New Guinea where their claims for refugee protection can be processed. The policy was developed by the Federal Government to prevent unauthorised arrivals from reaching the Australian mainland and applying for protection. It was introduced in September 2001.

## **Permanent Protection Visa**

This visa recognises refugee status and provides permanent asylum in Australia. Entitlements include immediate access to a full range of settlement services, social security benefits, family reunion and the right to leave the country and return. Refugees who apply overseas and refugees who apply while in Australia on another valid visa will be granted a Permanent Protection Visa.

## **Reconciliation**

The movement for Aboriginal Reconciliation aims to foster understanding of the historic relationship between Indigenous and non-Indigenous Australians and develop more harmonious and cooperative relations for the future.

## **Refugee**

The 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol define a refugee as someone who:  
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [or her] nationality and is unable, or owing to such fear, is unwilling to avail himself [or herself] of the protection of that country; or who, not having a nationality and being outside the country of his [or her] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

## **Self-determination**

Article 1 of the International Covenant on Civil and Political Rights (ICCPR), repeated identically in the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), states that self-determination is the right of all peoples to 'freely determine their political status and freely pursue their economic, social and cultural development'.





### **Skill Stream migrants**

A visa category which allows people to migrate to Australia on the basis of their occupation, education, work experience, age and English language ability.

### **Special Eligibility category**

A visa category that allows former residents and certain categories of non-citizens who spent their formative years in Australia to migrate to Australia.

### **Special measures**

A 'special measure' gives a group an extra benefit (additional to those enjoyed by the rest of the community) to help remedy a legacy of discrimination or disadvantage against that particular group. For example, Aboriginal Medical Services are a 'special measure' in recognition of the gross health disparities affecting Indigenous Australians. A 'special measure' is an exception to the general rule prohibiting racial discrimination. It is lawful if its sole purpose is to advance the equal enjoyment of human rights of a racial or ethnic group.

### **'Stolen children' or 'Stolen generations'**

The popular terms describing the Indigenous children forcibly removed from their parents (without parental consent or a court order) by government authorities across Australia, starting as early as the 1870s in some places and continuing into the 1960s in some States, with the aim of assimilating them into non-Aboriginal society.

### ***Terra nullius***

A Latin term meaning 'not inhabited'. Australia was colonized by the British in the belief that the colony was being acquired by occupation (or settlement) of a 'terra nullius'. The High Court's Mabo decision in 1992 overturned the 'terra nullius' fiction by recognising that Indigenous property rights survived the British colonisation of Australia.

### **Temporary Protection Visa**

This visa recognises refugee status but only provides temporary asylum in Australia. Entitlements do not include access to settlement services, most social security benefits, sponsorship of family members to Australia or the right to leave Australia and return. Most refugees who arrived in Australia without a valid visa can only apply for a Temporary Protection Visa.

### **Torres Strait Islander**

The Aboriginal and Torres Strait Islander Commission Act 1989 defines a Torres Strait Islander as 'a descendant of an Indigenous inhabitant of the Torres Strait Islands'. The Torres Strait Islands lie between the tip of Cape York in Queensland and Papua New Guinea.

### **'Unauthorised arrivals'**

The term most commonly used by DIMIA for people who arrive in Australia without a valid visa. Under the Migration Act the correct legal term is 'unlawful non-citizens'. Unlawful non-citizens must be detained until removed from Australia or granted a visa.





### **Universal Declaration of Human Rights 1948**

Adopted in the aftermath of World War II by the newly-established United Nations General Assembly, the Universal Declaration proclaimed the basic rights and freedoms to which everyone, regardless of nationality, is entitled. These include, among others, the rights to life, liberty, freedom of thought, conscience and religion, to work, to education and freedom from persecution. Unlike conventions and covenants, the Universal Declaration was not originally binding. However, it is now recognised as binding on all UN members.

### **White Australia policy**

A series of laws and policies implemented in Australia from 1901 until the 1970s which aimed to keep people who were not from a white European background out of the country. These laws also restricted the lives of Indigenous people and other people already in Australia who were not considered 'white'.



## Questions and Answers about Aboriginal & Torres Strait Islander People

### 1. Who are Aboriginal and Torres Strait Islander people?

Aboriginal and Torres Strait Islander people are the first inhabitants of Australia. Old definitions based on skin colour or percentages of 'Aboriginal blood' have been replaced by modern definitions which stress ancestry and identification as the key to Aboriginal identity.

Today, the Federal Government defines an Aboriginal person as someone who:

- is of Aboriginal descent;
- identifies as an Aboriginal person; and
- is accepted as an Aboriginal person by the community in which he or she lives.

Aboriginal people comprise diverse Aboriginal nations, each with their own language and traditions and have historically lived on mainland Australia, Tasmania or on many of the continent's offshore islands. Torres Strait Islander peoples come from the islands of the Torres Strait, between the tip of Cape York in Queensland and Papua New Guinea. Torres Strait Islanders are of Melanesian origin with their own distinct identity, history and cultural traditions. Many Torres Strait Islanders live on mainland Australia.

The term 'Indigenous' is used to refer to both Aboriginal and Torres Strait Islander peoples.

The use of the term 'Indigenous' has evolved through international law. It acknowledges a particular relationship of aboriginal people to the territory from which they originate.

The United Nations High Commissioner for Human Rights has explained the basis for recognising this relationship as follows:

'Indigenous or aboriginal people are so-called because they were living on their lands before settlers came from elsewhere; they are the descendants - according to one definition - of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means ...

(I)ndigenous people have retained social, cultural, economic and political characteristics which are clearly distinct from those of the other segments of the national populations.

Throughout human history, whenever dominant neighbouring peoples have expanded their territories or settlers from far away have acquired new lands by force, the cultures and livelihoods - even the existence - of indigenous peoples have been endangered. The threats to indigenous peoples' cultures and lands, to their status and other legal rights as distinct groups and as citizens, do not always take the same forms as in previous times. Although some groups have been relatively successful, in most parts of the world indigenous peoples are actively seeking recognition of their identities and ways of life.<sup>1</sup>

#### A note on terminology

The 'A' in 'Aboriginal' is capitalised similar to other designations like 'Australian', 'Arabic' or 'Nordic'. The word 'aboriginal' with a lowercase 'a' refers to an indigenous person from any part of the world. As such, it does not necessarily refer to the Aboriginal people of Australia.



'Aboriginal people' is a collective name for the original people of Australia and their descendants, and does not emphasise the diversity of languages, cultural practices and spiritual beliefs. This diversity is acknowledged by adding an 's' to 'people' ('Aboriginal peoples'). 'Aboriginal people' can also be used to refer to more than one Aboriginal person.

The 'I' in 'Indigenous' is capitalised when referring specifically to Australian Aboriginal and Torres Strait Islander people. The lower case 'i' for 'indigenous' is only used when referring to people originating in more than one region or country such as the Pacific region, Asiatic region, Canada or New Zealand.<sup>2</sup>

Aboriginal Australians have the longest continuous living culture in the world.

## 2. How many Aboriginal and Torres Strait Islander peoples are there?

**410,003** people identified themselves as 'Indigenous' in the 2001 Census.<sup>3</sup>

- 366,429 of these were Aboriginal.
- 26,046 were Torres Strait Islanders.
- 17,528 identified themselves as both Aboriginal and Torres Strait Islander.

In June 2001, 2.2% of the total population of Australia identified themselves as Indigenous. The number of people identifying themselves as Indigenous has increased by 16% since the 1996 Census.<sup>4</sup>

## 3. Where do Aboriginal and Torres Strait Islander peoples live? How old are they?

### Place of residence

**Table 3.1: State or territory of residence of Indigenous Australians, 2001**

State/territory	Indigenous population	% of national total Indigenous population*	Total population	Indigenous people as % of state/territory population
New South Wales	119,865	29.2%	6,371,745	1.9%
Queensland	112,772	27.5%	3,655,139	3.1%
Western Australia	58,496	14.3%	1,851,252	3.2%
Northern Territory	50,785	12.4%	210,664	24%
Victoria	25,078	6.1%	4,644,950	0.5%
South Australia	23,425	5.7%	1,467,261	1.6%
Tasmania	15,773	3.8%	456,652	3.5%
ACT	3,576	0.9%	311,947	1.1%
Other territories	233	0.1%	2,740	8.5%
Australia	410,003	100%	18,972,350	2.2%



Source: Australian Bureau of Statistics, 2001 Census: Basic Community Profile and Snapshot, Australia and all States and Territories, Canberra, 2002.

\* Excluding overseas visitors.

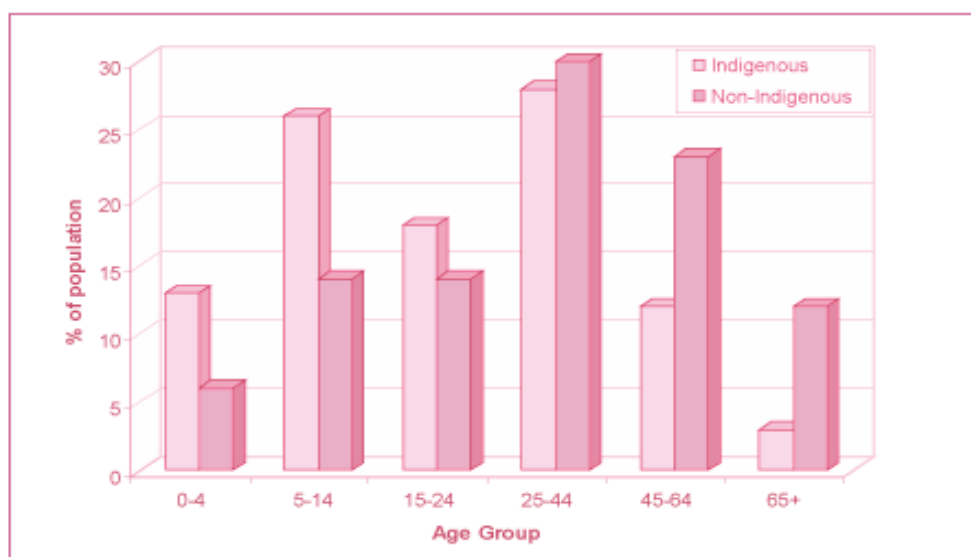
### Torres Strait Islander People

Over half (58%) of all Torres Strait Islander people live in Queensland. The rest of the population live in other States, with 18% in New South Wales and 6% in Victoria. Cairns had the highest Torres Strait Islander population in Queensland (1,814 people), followed by Townsville (1,379). Within the Torres Shire, the largest Indigenous populations were recorded on Thursday Island (1558 people). Bamaga (655) and Badu Island (518) also have relatively large Torres Strait Islander populations. A majority of the people in the Torres Shire settlements are Torres Strait Islanders (74%).<sup>5</sup>

### Age

As a whole, the Indigenous population is much younger than the non-Indigenous population. For example, nearly 60% of the Indigenous population in Australia are aged under 25 compared with around 34% of the non-Indigenous population.<sup>6</sup>

**Figure 3.1: Proportion of Indigenous and non-Indigenous population in specific age groups, 2001**



Source: Australian Bureau of Statistics, 2001 Census: *Indigenous Profile: Australia* (Catalogue No. 2002.0) Canberra, 2002;

## 4. Are Aboriginal and Torres Strait Islander peoples disadvantaged?

There are clear disparities between Indigenous and non-Indigenous Australians across all indicators of quality of life. Indigenous Australians generally experience lower standards of health, education, employment and housing, and are over-represented in the criminal justice system compared to non-Indigenous people.



This disadvantage was highlighted in the Report of the Royal Commission into Aboriginal Deaths in Custody in 1991. In the Report, Commissioner Elliot Johnston QC stated that "the consequence of the history of Aboriginal people (since European settlement) is the partial destruction of Aboriginal culture and a large part of the Aboriginal population and also disadvantage and inequality of Aboriginal people in all the areas of social life where comparison is possible between Aboriginal and non-Aboriginal people".<sup>7</sup>

## Health

### Life expectancy 2001:<sup>8</sup>

- Indigenous males - 56 years
- all Australian males - 77 years
- Indigenous females - 63 years
- all Australian females - 82 years

### Death rate 2001:

The death rate among the Indigenous population was more than twice the death rate for the total Australian population.<sup>9</sup> The death rate for Indigenous people aged 35-54 in the Northern Territory, Queensland, South Australia and Western Australia, was five times that of the total Australian population.<sup>10</sup>

### Infant mortality 2001:

The infant mortality rate for Indigenous Australians (11 deaths per 1,000 live births) was twice the infant mortality rate for all Australians (5.0).<sup>11</sup>

### Causes of death 2001:

While heart disease and cancer remain the leading causes of death for both Indigenous and non-Indigenous Australians, Indigenous people are more likely than other Australians to die from accidents, assault and self-harm (17% of Indigenous deaths compared to 6% of total deaths), and are more likely to die from diseases of the respiratory system and endocrine, nutritional and metabolic systems, such as diabetes.<sup>12</sup>

### Hospitalisation 2001:

<sup>13</sup> Indigenous people were almost twice as likely to be hospitalised for most diseases and conditions as non-Indigenous people. Hospital admissions were most common amongst Indigenous children aged under 5 years and Indigenous adults aged 25 to 34 and 45 to 54 years (23% for each age group).

### General health 2001:

Indigenous people were nearly twice as likely to report their health as 'fair or poor' (34%) compared to non-Indigenous people (18%). Based on self-reported height and weight, Indigenous people aged 15 years and over were more likely to be overweight or obese (61%) compared with non-Indigenous people (48%). Indigenous people were more likely to report asthma as a long-term health condition (17%) than the non-Indigenous population (12%). Indigenous people were more than three times more likely to report some form of diabetes than non-Indigenous Australians.<sup>14</sup>

## Education

### Educational achievement 2001:

The proportion of Indigenous people over 15 years who had completed Year 12 was 25% in major cities and 8% in remote areas compared with 46% and 35% respectively for non-Indigenous people.<sup>15</sup>

### School retention 2002:

38% of Indigenous students continued to Year 12 compared with 76% of non-Indigenous students.<sup>16</sup>



### **Higher education 2001:**

5% of Indigenous people aged between 18 and 24 were attending university compared with 23% of non-Indigenous people.<sup>17</sup> The number of Indigenous people aged 15-19 who were attending an educational institution in 2001 was around 19500 compared with around 900000 non-Indigenous people of the same age.<sup>18</sup>

### **Employment and income**

#### **Labour force participation 2001:**

52% of Indigenous people aged 15 and over were in the labour force compared with 63% of the total population in the same age group.<sup>19</sup>

#### **Unemployment 2001:**

The unemployment rate was 20% for Indigenous adults compared with 7.2% for non-Indigenous adults. This rate has improved since 1994 (when Indigenous unemployment was 27.8%) but has deteriorated since 2000 when Indigenous unemployment was 17.6%.<sup>20</sup>

#### **Impact of CDEP 1996:**

The Community Development Employment Projects (CDEP) is the Indigenous work-for-the-dole scheme. CDEP is not available to all Indigenous peoples. Indigenous unemployment rates rise significantly if participants in CDEP are counted as unemployed. In 2001, 7% of Indigenous people aged 15 years and over who reported their labour force status said they participated in CDEP.<sup>21</sup>

#### **Income 2001:**

The average weekly household income for Indigenous people (\$364) was only 62% of that for non-Indigenous people (\$585).<sup>22</sup>

### **Housing**

#### **Home ownership 2001:**

32% of Indigenous people own or are buying their own homes compared with 71% of non-Indigenous Australians.<sup>23</sup>

#### **Temporary dwellings 1999:**

An estimated 13% of Indigenous people living in remote communities live in temporary dwellings, including tin sheds, caravans and 'humpies'.<sup>24</sup>

#### **Overcrowding 2001:**

15% of Indigenous households were overcrowded by accepted Australian standards, compared with 4% of other Australian households.<sup>25</sup>

#### **Sewerage service 2001:**

A survey of 1,216 Indigenous communities with a population of 50 or more found that 48% had reported sewerage system overflows or leakages in the 12 months prior to the survey.<sup>26</sup>

### **Criminal justice system**

#### **Adult imprisonment 2002:**

Nationally, the imprisonment rate for Indigenous adults at June 2002 was approximately 15 times that for non-Indigenous adults. Western Australia recorded the highest imprisonment rate for Indigenous people (2,400 Indigenous persons per 100,000 Indigenous people) followed by New South Wales at approximately 2,100 per 100,000. The proportion of male prisoners who were Indigenous rose from 14% in 1992 to 20% in 2002.<sup>27</sup>

#### **Juvenile detention 2001:**

Indigenous youth aged 10 to 17 years were 19.9 times more likely than non-Indigenous juveniles to be detained in a juvenile justice centre.<sup>28</sup>



### **Deaths in custody 2002:**

Although Indigenous people are now less likely to die in police custody compared to 20 years ago, they are more likely to die in prison custody. From 1980-1989, 67 Indigenous people died in *police* custody and 39 in prison custody. From 1990-1999, 21 Indigenous people died in *police* custody and 93 in prison custody.<sup>29</sup>

During 2002, 69 people died in all forms of custody in Australia. Of the 69 deaths, 14 were Indigenous people. During the period 1990 to 2002, the majority of deaths (65%) occurred in prison custody, while 34% of the deaths occurred in police custody. 18% of all deaths in prison custody during this period were Indigenous.<sup>30</sup>

### **Women's disadvantage**

#### **Women's imprisonment 2002:**

In 1992, 18% of all female prisoners were Indigenous. By 2002, this figure had risen to 25%.<sup>31</sup>

#### **Domestic violence:**

Accurate statistics about the incidence of violence against women in Indigenous communities are scarce. However, research suggests that Indigenous women and children are more than 45 times more likely to be victims of domestic violence and more than 8 times more likely to be victims of homicide.<sup>32</sup>

## **5. Do Aboriginal and Torres Strait Islander people get special treatment from the government?**

Generally, Indigenous people receive the same level of public benefits as non-Indigenous people. Individuals do not get extra funding because they are Indigenous. However, specific government programs, not additional income, have been introduced for Aboriginal and Torres Strait Islander people because they are the most economically and socially disadvantaged group in Australia. Special programs are necessary to help overcome disadvantage. Examples of programs specifically designed to meet Indigenous needs include:

- Community Development Employment Projects Scheme (CDEP) - Indigenous work-for-the-dole.
- Aboriginal Medical Services and Aboriginal Legal Services - provide cost-free medical and legal services.
- The Indigenous Employment Programme - provides flexible financial assistance to help create employment and training opportunities for Indigenous people in the private sector.
- The Indigenous Education Strategic Initiatives Programme (IESIP) - provides supplementary funding to pre-schools, schools and vocational education and training providers to help improve educational outcomes for Indigenous students.

These programs supplement those available to the mainstream population. They are necessary because Indigenous people do not generally use mainstream services at the same rate as non-Indigenous people and because the level of Indigenous disadvantage is much more severe. Medical and legal services for low income and migrant communities are also available in Australia.

### **Education**

Public expenditure on education for Indigenous people is 18% higher per capita than for non-Indigenous people aged 3-24 years. The higher expenditure is a result of various factors including location (delivering education in rural and remote locations is more expensive) and lower than





average income for Indigenous people which leads to a greater average need for assistance to students.<sup>33</sup>

## Health

Public and private expenditure on health services for Indigenous Australians rose by at least 15% per person between 1995-96 and 1998-99. This compares with 10% per person increase in non-Indigenous health spending over the same period. However, given the comparatively poor health indicators for Indigenous people, public expenditure on health services for Indigenous people was similar to that for non-Indigenous people in low income groups. The difference in health expenditure on Indigenous and non-Indigenous people reflects differences in income level, health status and cost of delivering health services to remote communities. While Indigenous people are more likely to use state-funded health services (hospitals and community health services), Indigenous people are low users of the major Commonwealth-funded health programs such as Medicare and the Pharmaceutical Benefits Scheme.<sup>34</sup> In 2002, the Commonwealth Government stated it would commit around \$302.7 million on Indigenous health and ageing programs during 2002-03.<sup>35</sup>

There have been a number of estimates of the amount of extra spending needed to provide the same standard of health services to Indigenous Australians as are currently provided to non-Indigenous Australians, taking into account that Indigenous Australians have greater health needs:

- In 2003, John Deeble, the architect of the Medicare system, calculated \$250 million per annum extra should be spent, based on the shortfall in Medicare spending on Indigenous Australians when compared to non-Indigenous Australians.<sup>36</sup>
- Access Economics estimated \$400 million per annum extra should be spent in a report published in May 2004<sup>37</sup>. The difference in John Deeble's and Access Economics' figure is because the latter is based on a greater estimate of Indigenous health needs.<sup>38</sup>
- Another 2004 report by Econtech estimated the cost of extending universal primary health care to Indigenous communities would cost between \$409 million and \$570 million depending on the quality of service offered<sup>39</sup>.

## Housing

In 2002-03, the Government said it would spend approximately \$350 million on Indigenous-specific housing and related infrastructure programs. In addition to Indigenous-specific housing programs, an estimated 22% of Indigenous households are tenants in mainstream public housing.

Click here for further information aimed at addressing popular myths and misconceptions about government spending in relation to Indigenous Australians

[http://www.atsic.gov.au/news\\_room/As\\_a\\_Matter\\_of\\_Fact/index.asp](http://www.atsic.gov.au/news_room/As_a_Matter_of_Fact/index.asp)

## 6. What are the new arrangements for the administration of Indigenous affairs introduced by the Federal Government in 2004?

In April 2004, the Federal Government announced the introduction of new arrangements for administering Indigenous affairs from 1 July 2004.<sup>41</sup> Under these arrangements, the Aboriginal and Torres Strait Islander Services (ATSIS) and the Aboriginal and Torres Strait Islander Commission (ATSIC) were abolished (effective from 30 June 2004 and 30 June 2005 respectively) and responsibility for Indigenous specific programs transferred to mainstream government departments



and agencies.

The Federal Government established the following bodies to administer Indigenous Affairs:

- *The Ministerial Taskforce on Indigenous Affairs* – comprised of government ministers who set the direction for the Federal Government's approach to Indigenous affairs;
- *The Secretaries Group on Indigenous Affairs* – comprised of heads of federal government departments and reports to the Ministerial Taskforce;
- *The National Indigenous Council* – a Government appointed Board of Indigenous people to advise Government. It is not intended to be representative or to perform the role previously held by ATSIC;
- *The Office of Indigenous Policy Coordination* – located in the Department of Immigration, Multiculturalism and Indigenous Affairs, it coordinates federal government activity on Indigenous affairs; and
- *Indigenous Coordination Centres* – 27 regionally-based offices which engage with Indigenous communities at the local level to coordinate government service delivery to communities.

The new approach is based on a process of negotiating agreements with Indigenous families and communities at the local level ('Shared Responsibility Agreements') and setting priorities at the regional level ('Regional Participation Agreements'). Central to this negotiation process is the concept of mutual obligation or reciprocity for service delivery.<sup>42</sup> The Government has stated that the new approach also involves:

- the creation of a single budget submission across government for Indigenous affairs;
- supporting regional Indigenous representative structures;
- a focus on implementing the commitments made by the Council of Australian Governments to address Indigenous disadvantage; and
- improving accountability for mainstream programs and services.

### **What were ATSIC and ATSIS?**

ATSIC stands for Aboriginal and Torres Strait Islander Commission. It was made up of a national Board and Regional Councils whose membership was elected by Indigenous people every three years. ATSIC was established in 1990 and was the main organisation responsible for:

- Developing programs for Indigenous people supplementary to mainstream programs and services.
- Monitoring how government agencies provide services to Indigenous people.
- Advising national, regional and local governments on Indigenous issues.

In May 2004, the Government introduced legislation into Parliament to abolish ATSIC.<sup>43</sup> The Prime Minister stated that the Government believed 'very strongly that the experiment in separate representation, elected representation, for Indigenous people has been a failure'<sup>44</sup>.

ATSIC's National Board of Commissioners ceased to exist from midnight 23 March 2005.<sup>45</sup> However, ATSIC Regional Councils continued to function until 30 June 2005.

Until 2003, ATSIC was also responsible for administering Aboriginal and Torres Strait Islander programs and making individual funding decisions. From 1 July 2003, these functions were transferred to a new Executive Agency, Aboriginal and Torres Strait Islander Services (ATSIS). ATSIS was required to administer these programs in accordance with the policy directions



provided by ATSIC. Under the new arrangements, ATSI was abolished on 30 June 2004 and its responsibilities transferred to mainstream government departments and agencies.

Click here for further information on the background leading to the new arrangements in Indigenous affairs Human Rights and Equal Opportunity Commission Aboriginal and Torres Strait Islander Social Justice Commissioner 2004 Social Justice Report

[http://www.humanrights.gov.au/social\\_justice/sjreport04/index.html](http://www.humanrights.gov.au/social_justice/sjreport04/index.html)

Click here for information on the new Government arrangements for delivering services to Indigenous Australians

<http://www.oipc.gov.au/publications/default.asp>

## **7. What is the history of government policies on Aboriginal and Torres Strait Islander people?**

### ***Terra nullius***

From 1788, Australia was treated as a colony of settlement, not of conquest. Aboriginal land was taken over by British colonists on the premise that the land belonged to no-one ('terra nullius'). Australia's colonisation resulted in a drastic decline in the Aboriginal population. Estimates of how many Indigenous people lived in Australia at the time of European settlement vary from 300,000 to 1 million. Estimates of the number of Indigenous people who died in frontier conflict also vary widely.<sup>46</sup> While the exact number of Indigenous deaths is unknown, many Indigenous men, women and children died of introduced diseases to which they had no resistance such as smallpox, influenza and measles. Many also died in random killings, punitive expeditions and organised massacres.

It is estimated that there were 250 Indigenous languages at the time of European settlement.<sup>47</sup> It is estimated that today, approximately 20 languages remain strong.<sup>48</sup>

In 1992, the premise of Australia's colonisation, terra nullius, was dismissed by the High Court of Australia in the Mabo decision<sup>49</sup>. In Mabo, the High Court acknowledged the occupation of Australia by Aboriginal and Torres Strait Islander peoples prior to European settlement.

### **Protection policies**

Indigenous survivors of frontier conflicts were moved onto reserves or missions. From the end of the nineteenth century, various State and Territory laws were put in place to control relations between Aboriginal people and other Australians. Under these laws, protectors, protection boards and native affairs departments segregated and controlled a large part of the Aboriginal population. It has been estimated that the Aboriginal population during the 1920s had fallen to only about 60,000 from perhaps 300,000 or even one million people in 1788.<sup>50</sup>

### **Assimilation policies**

In 1937, the Commonwealth Government held a national conference on Aboriginal affairs which agreed that Aboriginal people 'not of full blood' should be absorbed or 'assimilated' into the wider population. The aim of assimilation was to make the 'Aboriginal problem' gradually disappear so that Aboriginal people would lose their identity in the wider community.



Protection and assimilation policies which impacted harshly on Indigenous people included separate education for Aboriginal children, town curfews, alcohol bans, no social security, lower wages, State guardianship of all Aboriginal children and laws that segregated Indigenous people into separate living areas, mainly on special reserves outside towns or in remote areas.

Another major feature of the assimilation policy was stepping up the forcible removal of Indigenous children from their families and their placement in white institutions or foster homes.

Click here for details about the 'stolen generations' and the Bringing them home Report

<http://www.humanrights.gov.au/bth/index.htm>

### Stolen children' or 'stolen generations'

The history of the 'Stolen children' varies depending on time and place. Table 7.1 shows where and when Indigenous children could lawfully be taken away without their parents' consent and without a court order. Non-Indigenous children could also be removed without their parents' consent, but only by a court finding that the child was uncontrollable, neglected or abused.

**Table 7.1: State and Territory laws authorising forcible removal of Indigenous children**

Where	When	Why
NSW and ACT	1915 - 1940	If the Protection Board believed it was in the interest of the moral or physical welfare of the child.
Northern Territory	1911 - 1964	Being 'aboriginal or half-caste' if the Chief Protector believed it was necessary or desirable.
Queensland	1897 - 1965	For 'aboriginal' children, and 'half-cast' children living with Aboriginal parent(s), if the Minister ordered it. These laws did not apply to Torres Strait Islanders.
South Australia	1923 - 1962	Legitimate children (that is, children whose parents were lawfully married) could only be removed if they were over 14 or had an education certificate. Illegitimate children could be removed at any time if the Chief Protector and State Children's Council believed they were neglected.
Victoria	1871 - 1957	If the Governor of the State was satisfied the child was neglected or left unprotected. From 1899, for the better care, custody and education of the child.
Western Australia	1909 - 1954	Police, protectors and justices of the peace could remove any 'half-caste' child to a mission. Extended to all 'natives' under 21 in 1936.

Source: Appendices 1-7, Bringing them home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, HREOC, 1997.



### **Where were the children placed?**

Indigenous children were forcibly removed from their families and communities to the care of non-Indigenous people with the aim of assimilating them into non-Aboriginal society. In Queensland, this often meant separating the children into dormitories on reserves. In New South Wales and Western Australia, many children were trained in Aboriginal-only institutions to become domestic servants or farm labourers. Other children were transferred to orphanages and children's homes where Aboriginal and non-Aboriginal children were brought up together. In other cases, and especially after the 1940s, Aboriginal children were fostered or adopted into non-Aboriginal families.

### **How many children were removed?**

In its 1997 report *Bringing them home*, the Human Rights and Equal Opportunity Commission estimated that between one-third and one-tenth of all Aboriginal children growing up during the years in which forcible removal laws operated were removed. The full scale of removals is still not known because many records have been lost.

### **What were the consequences of the removals?**

Many members of the Stolen Generation reported during the *Bringing them home* Inquiry that they were forbidden to speak their Aboriginal language, they were told their parents did not want them, they experienced neglect as well as physical, emotional and sexual abuse, they received little or no education, and were refused contact with their families.

The effects of the separation from their parents and communities, being institutionalised and being abused, have been reported to impact on self-esteem, cultural identity, social skills and survival skills, developing relationships and parenting. Many members of the Stolen Generations still have not been reunited with their families. The legacy of forcible removal remains in the lives of Indigenous individuals and communities today.

### **Citizenship**

In May 1967, a Constitutional referendum to include Indigenous people in the national census and to enable the Commonwealth Government to make laws on Aboriginal affairs passed with a 'Yes' vote of almost 91%.

Before 1967, Aboriginal Affairs was a state responsibility and the Commonwealth Government was only in charge of Aboriginal people in the Northern Territory. After 1967, the Commonwealth Government shared power over Aboriginal Affairs with the States.

To read more about the 1967 referendum click here:

<http://www.aph.gov.au/library/pubs/bp/1996-97/97bp11.htm>

### **Equal Pay**

Having repeatedly rejected Aboriginal claims to equal pay for equal work during the 1930s and 1940s, the Commonwealth Conciliation and Arbitration Commission finally granted Aboriginal stockmen award wages in 1966.<sup>51</sup> This determination had a flow-on effect to other employed Aboriginal people nationally.



## Self-determination policy

The federal Labor Government led by Gough Whitlam adopted the policy of 'self-determination' for Indigenous communities in 1972. This policy was described as 'Aboriginal communities deciding the pace and nature of their future development as significant components within a diverse Australia'. It recognised that Aboriginal people had a right to be involved in decision making about their own lives.

## Self-management policy

The federal Coalition Government led by Malcolm Fraser, which came to power in late 1975, adopted the policy of 'self-management' which focused on Indigenous communities managing the government projects and funding locally, but with little say in what projects would be created. The Hawke and Keating Labor Governments from 1983-1996 used both self-determination and self-management as key principles in their Indigenous affairs policies. The Coalition Government led by John Howard from 1996 has reverted to a policy of self-management.

## Land rights

In 1976, the Federal Government passed land rights law for Aboriginal peoples in the Northern Territory. Most other states also have some form of Land Rights legislation in place although the degree of control given to Indigenous peoples over the land in question differs significantly from state to state.

## Native title

In the Mabo case of 1992, the High Court of Australia rejected the long-standing doctrine of terra nullius. It found that Aboriginal and Torres Strait Islander people who have maintained a continuing connection with their land, according to their traditions and customs, may have their rights to land under traditional law recognised in Australian law. This is native title.

Click here for more information on the history of contact between Aboriginal people and governments in Australia

<http://www.dreamtime.net.au/indigenous/timeline3.cfm>

## 8. What is the right to self-determination?

Self-determination is the right of all peoples to 'freely determine their political status and freely pursue their economic, social and cultural development' (Article 1 of the International Covenant on Civil and Political Rights).<sup>52</sup> Self-determination is a collective right (belonging to a 'peoples') rather than an individual right. The claim by Indigenous peoples to the right of self-determination raises two questions: (1) Do Indigenous groups constitute a 'peoples'? (2) Does self-determination give indigenous peoples the right to secession (that is, to break away from an existing nation)?

The application of self-determination to indigenous people is the subject of ongoing negotiations in the United Nations. Many countries now accept that self-determination applies to Indigenous people, although they do not accept that self-determination would authorise secession, and are unwilling to formally recognise indigenous self-determination unless it is accompanied by a guarantee against secession. Indigenous peoples have responded to this concern in international negotiations by noting that international law provides protection against secession.





Most Indigenous people in Australia want self-determination within the existing nation. This would require recognition by the Government of their distinct cultures and forms of social organisation, governance and decision-making. It would mean transferring responsibility and power for decision-making to Indigenous communities so they can make decisions in relation to issues that affect them.

## 9. What is reconciliation?

Reconciliation aims to promote understanding of the history of contact between Indigenous and non-Indigenous people and develop better relations for the future.<sup>53</sup>

The formal reconciliation process began in 1991 with the establishment of the Council for Aboriginal Reconciliation for a ten year period. The Council was established by legislation with 25 Indigenous and non-Indigenous members appointed by the Government. The Council was required to promote reconciliation between Aboriginal and Torres Strait Islander peoples and the wider Australian community. At the end of its ten-year period, the Council was also required to make recommendations to the Government on actions for achieving reconciliation.

The Council developed a declaration towards reconciliation, a Roadmap for Reconciliation which contains four national strategies and a final report, titled Reconciliation: Australia's Challenge, which sets out a comprehensive program of activities to address the 'unfinished business' of reconciliation. The Council's proposals relate to four areas: achieving economic independence, overcoming Indigenous disadvantage, recognising Indigenous rights and sustaining the reconciliation process.

Reconciliation Australia was established by the Council in December 2000 to carry forward the reconciliation movement.

Click here for more information on the Council for Aboriginal Reconciliation:

<http://www.austlii.edu.au/au/orgs/car/docrec/relevant/docbook/p4.htm>

Click here for more information on Reconciliation Australia:

<http://www.reconciliationaustralia.org/>

## 10. What is native title?

'Native title' is the name given by Australian law to Indigenous peoples' traditional rights to their lands and waters. Those rights can range from a relationship similar to full ownership of the land through to the right to go onto the land for ceremonies or to hunt, fish or gather foods and bush medicines. To have their native title rights recognised, the Indigenous group has to prove they still have a connection with their country according to their traditional laws.

Australian law gives all other land titles priority over native title. In many cases the creation of an interest in land under western law has the effect of extinguishing any native title rights that might have existed. However, in some cases Indigenous and non-Indigenous interests in land can co-exist - for example, Indigenous people might be able to visit their country freely even though it is on a cattle station. Even in these cases, wherever there is a conflict between the two sets of interests, the non-Indigenous interest will prevail.





Native title cannot be recognised on land which is fully owned by someone else. It can only be recognised in areas like:

- Vacant land owned by the government (this is called 'Crown land').
- Some national parks and forests.
- Some pastoral leases (where the pastoralist rents a cattle or sheep station from the government without owning the land).
  - Aboriginal reserves.
- Beaches, seas, lakes and rivers that are not privately owned.

### How many native title applications have been successful?

As at 15 April 2005, the total number of native title determinations (decisions made on a claim) in Australia numbered 59. Of these, 39 were determinations that native title exists.<sup>54</sup>

**Table 10.1: Native title decisions by outcome and state/territory to 15 April 2005**

State/territory	Native title exists in some or all of the area	Native title does not exist	Total decisions
NSW	1	14	15
NT	6	0	6
Queensland	23	2	25
South Australia	0	1	1
Victoria	0	1	1
WA	9	2	11
<b>Total</b>	<b>39</b>	<b>20</b>	<b>59</b>

Source: National Native Title Tribunal, 'Native title determinations by State or Territory', at: [http://www.nntt.gov.au/ntdetermination/bystate\\_index.html#NewSouthWales](http://www.nntt.gov.au/ntdetermination/bystate_index.html#NewSouthWales) (website accessed 26 April 2005)

Click here to see a map of native title applications and determination areas as at 31 March 2005:

[http://www.nntt.gov.au/publications/data/files/National\\_FC\\_NTDA\\_Schedule.pdf](http://www.nntt.gov.au/publications/data/files/National_FC_NTDA_Schedule.pdf)

Click here to see a map of native title determinations as at 31 March 2005:

[http://www.nntt.gov.au/publications/data/files/Determinations\\_A4.pdf](http://www.nntt.gov.au/publications/data/files/Determinations_A4.pdf)



## Is native title the same as land rights?

Native title is not the same as land rights. Land rights are granted through legislation whereas native title is the recognition of rights based on the traditional laws and customs that existed before white occupation. Unlike land rights, native title rights are not granted by government so cannot be withheld or withdrawn by Parliament or the Crown, although they can be extinguished by an Act of government.

A land rights grant may cover traditional land, an Aboriginal reserve, an Aboriginal mission or cemetery, Crown land or a national park. Native title only covers land on which a traditional relationship continues to exist.

**Table 10.2: Australian land rights laws**

State/territory	Act/s and year	Major effects
South Australia	<i>Aboriginal Land Trust Act 1966</i>	Established the Aboriginal Lands Trust of South Australia made up of Aboriginal members and provided for the transfer of former Aboriginal reserves to the control and management of Aboriginal communities.
	<i>Pitjantjatjara Land Rights Act 1981</i>	Returned over 103,000 square kilometres in remote north-west South Australia to the traditional owners.
	<i>Maralinga Tjarutja Land Rights Act 1984</i>	Returned 81,000 square kilometres of former reserve land in central western South Australia to the traditional owners. 120 square kilometres contaminated by British atomic testing in the 1950s were excluded from the original land grant. These blocks were finally returned once they were made safe in March 2000.
Victoria	Six Aboriginal Lands Acts, five passed by the Victorian Parliament and one by the Federal Parliament. The first was the <i>Aboriginal Lands Act 1970</i>	Each Act transferred ownership of small areas of reserve or mission lands to trusts or Aboriginal organisations. No claims process established. These small areas make up a very low proportion of the area of Victoria.
Northern Territory	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (a federal law)	Former Aboriginal reserves (about 20% of the land in the NT) were returned to Aboriginal land trusts for the benefit of the traditional owners. Some national parks, including Uluru and Kakadu, were also



		<p>traditional owners to lodge claims to other Crown land until 1997. Claims are heard by Aboriginal Land Commissioners who make recommendations to the Federal Government. Four Aboriginal Land Councils assist with claims and with land management. The Act also established a regime for development, exploration and mining on Aboriginal land, and the payment of 'mining royalty equivalents' by government to traditional owners.</p>
	<p><i>Pastoral Land Act 1992</i></p>	<p>Indigenous people with a historic residential connection to land forming part of a pastoral lease, and who 'can demonstrate a present need for a community living area' may apply to a Tribunal for a recommendation (which the Minister has the discretion to act upon) that the government excise the land from the lease and transfer it to an incorporated Aboriginal association. The estate transferred is a fee simple estate, but the pastoral lessee may apply to have it reincorporated into the lease if it is not occupied by the Aboriginal claimants for a period exceeding five years.</p>
<p><b>New South Wales</b></p>	<p><i>Aboriginal Land Rights Act 1983</i></p>	<p>Transferred Aboriginal reserves to Local Aboriginal Land Councils, and enabled them to make claims for unoccupied Crown land not needed for a public purpose. It is not necessary for claimants to prove a traditional relationship with the land; a historical relationship may be sufficient. By 7 August 2001, 6,598 claims had been made but only 1,957 had been granted, totalling 75,952 hectares - less than 1% of the State. The Act also established a fund for land purchases, 13 Regional Land Councils and the NSW Aboriginal Land Council.</p>
	<p><i>National Parks and Wildlife (Aboriginal Ownership) Amendment Act 1996</i></p>	<p>Allows Indigenous communities to claim land in national parks. The total area of National Park affected by the legislation is 113,000 hectares.</p>
<p><b>Jervis Bay, a Commonwealth defence territory</b></p>	<p><i>Aboriginal Land Grant (Jervis Bay Territory) Act 1986</i></p>	<p>Provides for grants of land in the Jervis Bay Territory. The Jervis Bay National Park was transferred to the Wreck Bay Aboriginal Community Council in 1995, with the community leasing the Park back to the Director of National Parks and Wildlife. The transfer of land in the Territory has resulted in about 93% of the</p>



		Territory's 7,400 hectares being Aboriginal-owned.
Queensland	<i>Land Act 1962</i>	In 1982, an option was given to communities living on Aboriginal and Torres Strait Islander Reserves to take trusteeship of the land under a Deed of Grant In Trust (DOGIT) under this Act. The trustee is usually a community council but can be a group of individuals. Some 31 DOGIT Council communities were established throughout Queensland.
	<i>Aboriginal Land Act 1991; Torres Strait Islander Land Act 1991</i>	Transferred ownership of existing reserves and DOGIT land already run by Aboriginal or Torres Strait Islander councils to their communities. Claims could also be made for specified Crown land and claims would be decided by a Land Tribunal. Indigenous people in Queensland may claim land on the grounds of traditional affiliation or historical association or economic / cultural viability. At 2001, 80 parcels of land had been transferred to Indigenous communities, comprising a total area of about 540,000 hectares.
Tasmania	<i>Aboriginal Land Act 1995</i>	Established an elected Aboriginal Land Council and transferred ownership of 12 areas of particular significance to Tasmanian Aboriginal people to the Council's ownership. The amount of land concerned is 0.06% of the state.
Western Australia	No land rights legislation.	Under the <i>Aboriginal Affairs Planning Authority Act 1972</i> , Aboriginal reserves were vested in the Western Australian Aboriginal Land Trust (WAALT). The WAALT has leased these lands to communities for 99 years. The Bonner Report of the WAALT in 1996 recommended that title to WAALT lands be transferred to Aboriginal corporations in trust for Aboriginal people by 2002. The area of land under review made up 12% of Western Australia. The Bonner Report is in the process of being implemented.

Source: Pollack, D.P. (2001), 'Indigenous land in Australia: a quantitative assessment of Indigenous land holdings in 2000', *CAEPR Discussion Paper No. 221*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra; and pages 136-142, *Native Title Report 2003*, Aboriginal and Torres Strait Islander Social Justice Commissioner, HREOC, 2004.



Land for Aboriginal communities or enterprises may also be purchased with money from the Aboriginal and Torres Strait Islander Land Account (formerly Land Fund) created in 1995. The Land Account was the second part of the Federal Government's response to the High Court's *Mabo* decision (the first part of the response being the introduction of native title legislation), in recognition of the fact that the majority of Indigenous people had been dispossessed and would be unable to regain ownership and control of their land through the native title processes. The Land Account was established to help address this issue by providing cultural, social, environmental and economic benefits for Indigenous people.

The Land Account was created by a fixed annual allocation (\$121 million) from the government over 10 years to 30 June 2004. Around two-thirds of this amount has been retained in the Account and invested, with the remainder available to the Indigenous Land Corporation to fund its ongoing activities. Government allocations to the Land Account have ceased. It is expected that the work of the Indigenous Land Corporation will be funded from the investment income earned by the Land Account.<sup>55</sup> With the abolition of ATSIC and ATSIIS, the Indigenous Land Account and Indigenous Land Corporation were transferred to the Immigration and Multicultural and Indigenous Affairs portfolio of the Federal Government.<sup>56</sup>

**Table 10.4: Indigenous Land Corporation purchases by state and territory, 1995-2002**

State/territory	Number of properties	Total area (hectares)
NSW	46	187,109.4
NT	12	494,136.1
Queensland	39	1,368,852.1
South Australia	25	835,228.7
Tasmania	5	11,780.0
Victoria	27	3,963.6
WA	36	2,281,751.7
<b>Total</b>	<b>190</b>	<b>5,182,821.6</b>

Source: Indigenous Land Corporation, 'Indigenous Land Corporation Property Acquisition', at: <http://www.ilc.gov.au/> (website accessed 10 May 2005)

## Native title landmarks

### 1992: First recognition of native title - the *Mabo* case

In the *Mabo* case of 1992, the High Court of Australia recognised the native title rights of the Meriam people of the Torres Strait. This decision rejected the doctrine of *terra nullius*. It recognised for the first time that Aboriginal and Torres Strait Islander people who have maintained a continuing connection with their country, according to their traditions and customs, may have their rights to land under traditional law recognised in Australian law. This is native title.

Click here to read the *Mabo* Case (No. 2)

[http://www.austlii.edu.au/au/cases/cth/high\\_ct/175clr1.html](http://www.austlii.edu.au/au/cases/cth/high_ct/175clr1.html)



### **1993: *The Native Title Act***

In 1993, the *Native Title Act* was passed to recognise and protect surviving native title rights throughout Australia and set up a process for settling claims and conflicts about native title. The Act:

- Established a claim process for Indigenous people seeking recognition of native title, including the establishment of the National Native Title Tribunal.
- Provided a definition of native title.
- Provided that, in relation to future developments on the land, native title would have no lesser protection than other interests in land.
- Allowed Indigenous groups claiming native title to negotiate about mining developments proposed on the land *before* proving their claim (the 'right to negotiate').
- Validated non-Indigenous interests that would have been invalid as a result of the recognition of native title.

Click here for more information about the *Native Title Act*

<http://www.nntt.gov.au>

### **1996: The question of pastoral leases - the *Wik* Case**

In the 1996 *Wik* case, the High Court held that pastoral leases in Queensland do not necessarily cancel out native title rights and interests and that they could co-exist with the rights of pastoralists.

Click here to read the *Wik* Case

[http://www.austlii.edu.au/au/cases/cth/high\\_ct/unrep299.html](http://www.austlii.edu.au/au/cases/cth/high_ct/unrep299.html)

### **1998: The *Wik* amendments to the *Native Title Act***

In 1998, after the *Wik* case, the Federal Government amended the *Native Title Act*. The amendments:

- Weakened the 'right to negotiate' for native title claimants.
- Confirmed and validated the extinguishment of native title on a range of leases and other land tenures.
- Upgraded pastoral leaseholds by increasing the activities that could take place under the lease without having to negotiate with native title holders.
- Made it more difficult to register native title applications.
- Introduced 'Indigenous land use agreements' (ILUAs) which allow a native title group to negotiate on a range of matters about land and waters with others.

### **2001: *Croker Island (Commonwealth v Yarmirr)***

The *Croker Island* case recognised that native title could exist on sea country but that any native title rights that were recognised must not exclude the rights of any other person.

Click here to read the *Croker Island* case

<http://www.austlii.edu.au/au/cases/cth/HCA/2001/56.html>



### **2002: *Ward (Western Australia v Ward)***

In the *Ward* case, the High Court found that native title is made up of a bundle of rights and that these rights can be extinguished either in part or as a whole. One way native title rights are extinguished is by the grant of inconsistent non-Indigenous interests in the same area of land. For example, the creation of a pastoral lease in Western Australia extinguishes the right of the traditional owners to exclusive possession of that land. However, it does not extinguish the rights of the traditional owners to enter the land in order to hunt or fish or perform ceremonies, because these rights can co-exist with the rights of the pastoralist. In the case of freehold, native title is completely extinguished.

Click here to read the *Ward* case

<http://www.austlii.edu.au/au/cases/cth/HCA/2002/28.html>

### **2002: *Yorta Yorta (Members of the Yorta Yorta Community v Victoria)***

The High Court found that in order to have native title recognised, the claimant group must show that it, or its members have practised their traditional laws and customs continuously since European settlement.

Click here to read the *Yorta Yorta* Case

<http://www.austlii.edu.au/au/cases/cth/HCA/2002/58.html>

## **Further Reading**

### **Human Rights and Equal Opportunity Commission**

Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission, Sydney, 2004, at:

[http://www.humanrights.gov.au/social\\_justice/sjreport04/index.html](http://www.humanrights.gov.au/social_justice/sjreport04/index.html)

Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2004*, Human Rights and Equal Opportunity Commission, Sydney, 2004, at:

[http://www.humanrights.gov.au/social\\_justice/ntreport04/index.html](http://www.humanrights.gov.au/social_justice/ntreport04/index.html)

### **Australian Bureau of Statistics publications:**

*1996 Census of Population and Housing: Aboriginal and Torres Strait Islander People* (Catalogue No. 2034.0) 1998.

*2001 Census Community Profile Series: Indigenous Profile: Australia* (Catalogue No. 2002.0) 2002.

*National Aboriginal and Torres Strait Islander Social Survey (NATSISS)* (Catalogue No. 4714.0) 2002





*Hospital statistics relating to Indigenous people*, Occasional Paper, 1997-98, at:

<http://www.abs.gov.au/ausstats/abs%40.nsf/7884593a92027766ca2568b5007b8617/2c93f37e358172c9ca2568f400816c6d!OpenDocument>

Kate Ross, *Population Issues: Indigenous Australians* (Catalogue No. 4708.0), Australian Bureau of Statistics, 15 February 1999, at:

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## Questions and Answers about Migrants & Multiculturalism

### 1. How many people migrate to Australia?

In 2003-04, the number of new migrants who settled permanently in Australia was **148,884**. This figure included:

- **111,590** people living overseas who applied for and were granted a visa allowing them to enter and stay permanently in Australia (these are called 'settler arrivals')
- **37,294** people already living in Australia on temporary visas (such as student or business visas) who applied for and were granted a visa allowing them to stay permanently in Australia.<sup>1</sup>

#### Overseas Migrants

In 2003-04, **111,590** new settlers arrived in Australia from overseas.<sup>2</sup> This figure included 51,529 (46.2 %) skilled migrants, 29,548 (26.5%) family migrants, 18,717 (16.8 %) New Zealanders (who freely enter Australia to live and work under the Trans-Tasman Travel Agreement), 10,335 (9.3 %) refugees and humanitarian entrants and 1,254 (1.1 %) others, including former citizens returning to Australia.<sup>3</sup>

The number of settler arrivals changes each year according to the number of visas issued by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). Table 1.1 shows these changes.

**Table 1.1: Settler arrivals, 1992-2004**

Year	Permanent settler arrivals
1990-91	121,688
1991-92	107,391
1992-93	76,330
1993-94	69,768
1994-95	87,428
1995-96	99,139
1996-97	85,752
1997-98	77,327
1998-99	84,143
1999-00	92,272
2000-01	107,366
2001-02	88,900
2002-03	93,914
2003-04	111,590



**Sources:**

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**Onshore Migrants**

Settler arrival statistics do not tell the full story about permanent migration. In recent years, a growing number of people who are already in Australia on temporary visas (such as student or business visas) have applied for and been granted visas allowing them to stay permanently after their arrival in Australia.

In 2003-04, **37,294** people already in Australia were granted visas allowing them to stay permanently in Australia.<sup>4</sup> This figure included 23,322 skilled migrants, 12,639 family migrants, and 603 refugees and humanitarian entrants.<sup>5</sup>

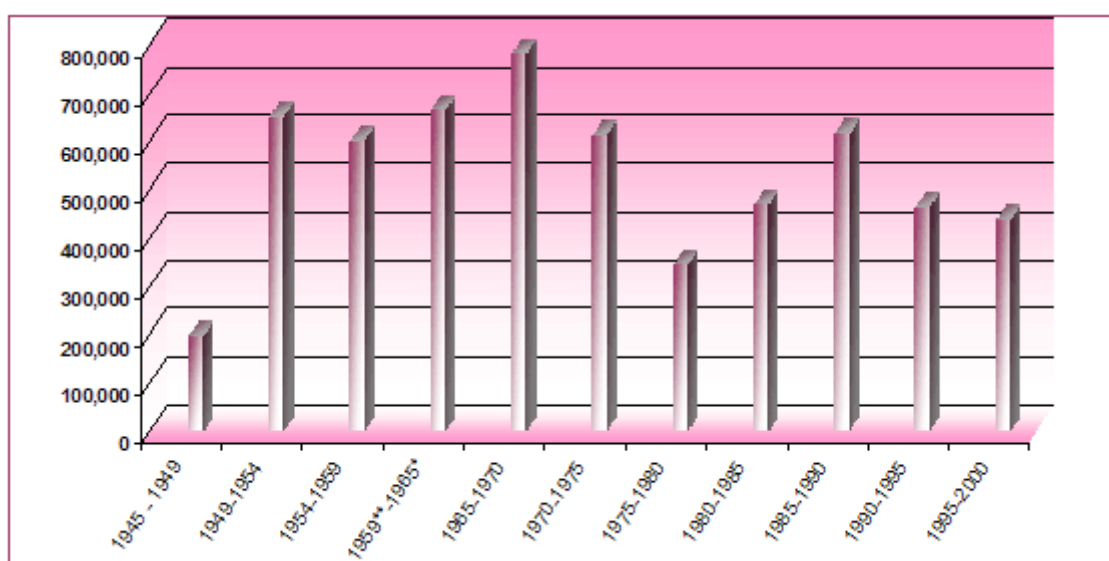
**Post-war migration**

Since 1945, over six million people have come to Australia as new settlers. Australia received more than 900,000 migrants during the 1990s, compared with:

- 1.1 million in the 1980s
- 960,000 in the 1970s
- 1.3 million in the 1960s
- 1.6 million between October 1945 and 30 June 1960.<sup>6</sup>

Figures 1.1 and 1.2 show that current levels of migration are relatively low compared with migrant intakes in the 1950s and 1960s.

**Figure 1.1: Settler arrivals in Australia: October 1945-June 2000**



Oct 1945- June 2000	No. of Arrivals
1945 - 1949	195,671
1949-1954	650,999
1954-1959	602,084
1959** -1965*	664,344
1965-1970	781,012
1970-1975	611,990
1975-1980	344,779
1980-1985	468,052
1985-1990	616,140
1990-1995	462,605
1995-2000	438,633

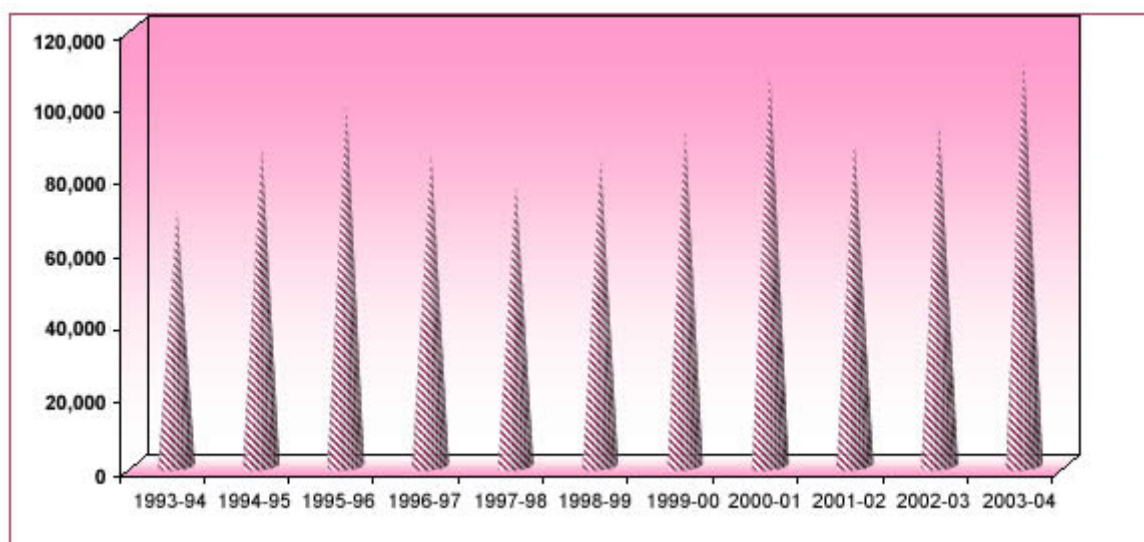
\*This group contains six financial years.

\*\* The data to 1959 was for permanent long term arrivals.

**Source:** DIMIA, *Immigration: Federation to Century's End 1901-2000*, Table 5: Country of birth of settler arrivals, pages 26-27, at:

<http://www.immi.gov.au/statistics/publications/federation/federation.pdf>

**Figure 1.2: Settler Arrivals in Australia: 1993-94 to 2003-04**



1993- 2004	No. of Arrivals
1993- 94	69,768
1994- 95	87,428
1995- 96	99,139



1996- 97	85,752
1997- 98	77,327
1998- 99	84,143
1999- 00	92,272
2000- 01	107,366
2001- 02	88,900
2002- 03	93,914
2003- 04	111,590

**Source:** DIMIA, *Settler Arrivals 1993-94 to 2003-04 Australia*, Table 1.1: Settler arrivals by birthplace, page 9, at:  
<http://www.immi.gov.au/statistics/publications/settler-arrivals/settarr-0304.pdf>

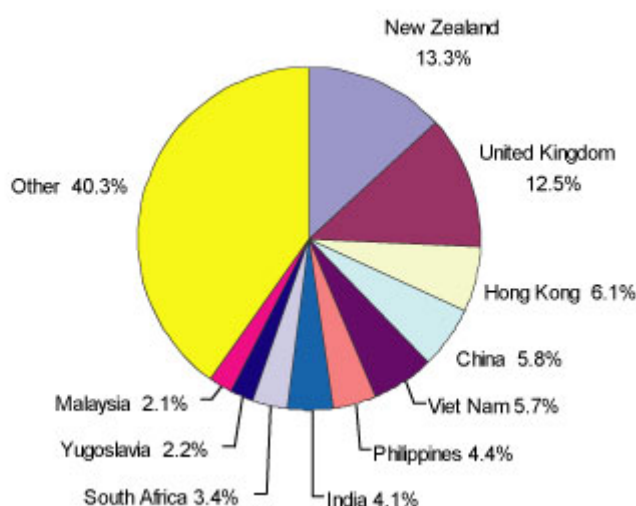
## 2. Where do migrants come from?

Until the 1970s, the 'White Australia' policy restricted immigration from non-European countries.<sup>7</sup> Today's immigration policies are not racially discriminatory. Anyone can apply for a visa to settle permanently in Australia regardless of their ethnic origin, race, religion or gender.

In 2003-04, the top 10 source countries for permanent settlers were: the United Kingdom (23,958); New Zealand (14,425); China (13,316); India (11,359); South Africa (7,578); Malaysia (5,101); Philippines (4,705); Sudan (4,604); Indonesia (4,393); and Singapore (3,114).<sup>8</sup>

Figure 2.1 shows that while New Zealand and the United Kingdom contributed most migrants over the last decade, a large proportion (40.3%) have come from a wide variety of 'other' source countries resulting in a great diversity of small and emerging ethnic communities in Australia.

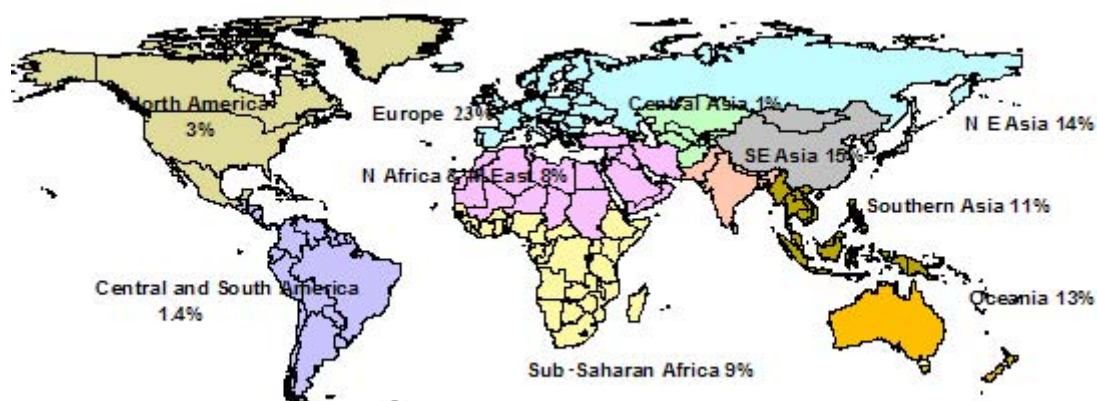
**Figure 2.1: Top 10 Birthplaces of new settlers, 1990-2000**



**Source:** DIMIA, *Immigration - Federation to Century's End, 1901-2000 Table 5, October 2001.*



**Figure 2.2: Region of origin of new migrants in Australia, 2003-04**



The values are:

- Europe: 23%
- South-east Asia: 15%
- North-east Asia: 14%
- Oceania: 13%
- Southern Asia: 11%
- Sub-Saharan Africa: 9%
- North Africa and the Middle East: 8%
- Northern America: 3%
- Central Asia: 1%
- Central and Southern America: 1.4%

**Source:** DIMIA, *Immigration Update 2003-04*, Jan 2005. Table 1.5 Permanent Additions by Country of Birth, 2003-4, page 10, at:

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### 3. Who can migrate?

New Zealanders can enter, live and work in Australia under the terms of the Trans-Tasman Travel Agreement and do not need a visa. All other migrants must apply for a visa to come to Australia. To get a visa, migrants must pass health and character checks and meet certain entrance criteria depending on the category they fit into. They are selected by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) under the following broad categories:

- **Skill Stream migrants** are chosen according to their occupation, age, education, work experience and English language ability. While some skilled migrants are sponsored by an employer or relative in Australia, the majority are skilled migrants who must pass a points test<sup>9</sup> and satisfy minimum requirements of skill, age and English language ability. In 2003-04, there were 71,240 places for Skill Stream migrants.<sup>10</sup> The proportion of skilled migrants in Australia's overall migration program has risen from 37.3% in 1996-97 to 62.3% in 2003-04.<sup>11</sup>
- **Family Stream migrants** are chosen according to their relationship with a sponsor who must be a close family member and an Australian resident or citizen. In 2003-04, there were 42,229 Family Stream visas granted.<sup>12</sup> The majority of Family Stream migrants

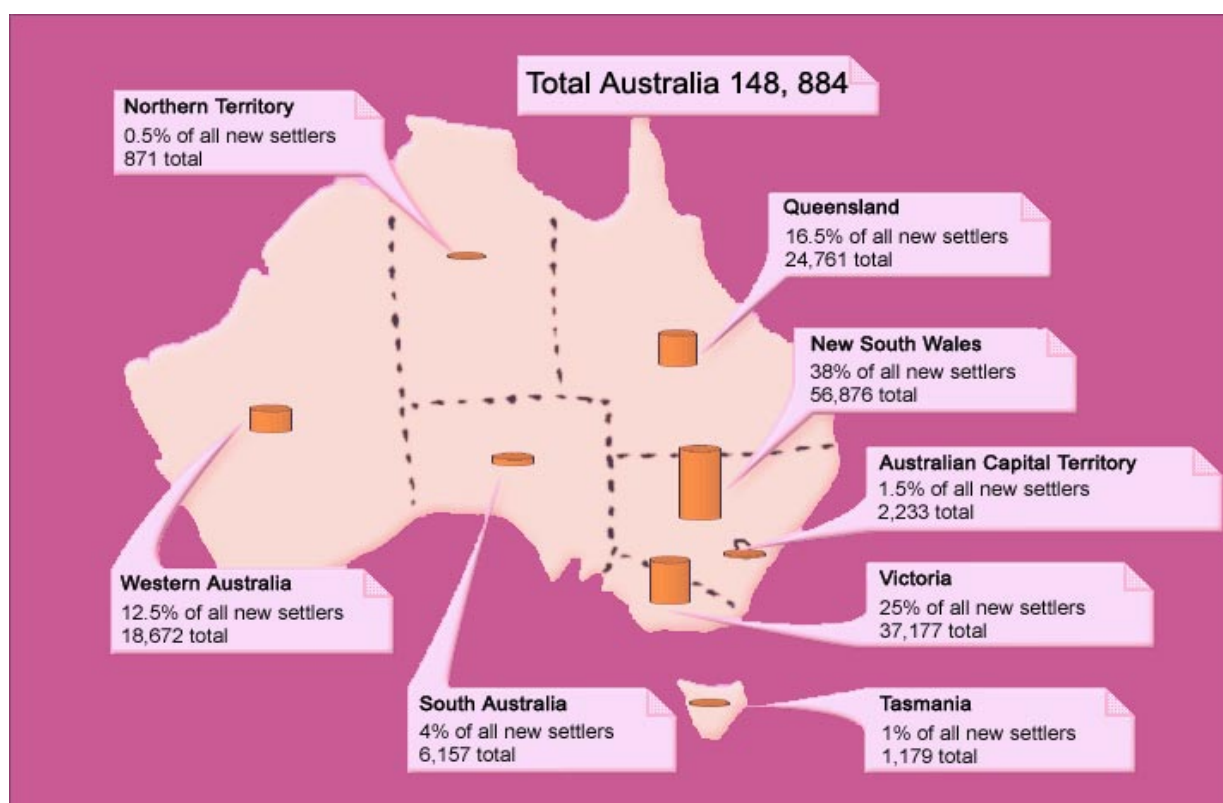


(85.6% in 2003-04) are the spouses or fiances of Australian citizens or permanent residents.<sup>13</sup> Many visa classes in the Family Stream are strictly limited.<sup>14</sup> The proportion of Family Stream migrants in Australia's overall migration program has fallen from 49% in 1996-97 to 37% in 2003-04.<sup>15</sup>

- **Humanitarian Program entrants** are chosen because they are refugees or people in need of humanitarian assistance. In 2003-04, there were 13,850 visas granted under the Humanitarian Program.<sup>16</sup>

#### 4. Where do migrants and refugees settle in Australia?

**Figure 4.1: New permanent settlers (including offshore and settler arrivals) by state/territory of intended residence, 2003-04.**



**Source:** DIMIA, *Immigration Update 2003 -04*, Jan 2005, Table 1.3. Permanent Additions by Selected Characteristics 2003-04, page 8, at: [http://www.immi.gov.au/statistics/publications/immigration\\_update/Update\\_June04.pdf](http://www.immi.gov.au/statistics/publications/immigration_update/Update_June04.pdf)

Note: Figures do not total 148,884 exactly due to some migrants not stating their place of intended settlement. (Note: % has been rounded up to nearest 0.5 %)

#### 5. What are the impacts of migration?

##### Economy

Migrants contribute to the economic development of Australia in many ways, such as: filling skill shortages; investing in the Australian economy; and fostering international trade through knowledge of overseas markets, business networks, cultural practices and languages other than





English.

- Migration raises average incomes and increases the scale of the economy generating wealth and employment for all Australians. Econtech estimates that a continuation of the current Migration Program would increase Australian living standards by around \$21 billion by 2021-22.<sup>17</sup>
- Federal and State governments enjoy benefits from extra migrants because of the tax revenue they generate. However, State governments can be exposed to additional costs, including education and health care. Skilled migrants are most beneficial to the Federal Budget because they earn more money, pay more taxes and make less use of government services.<sup>18</sup>
- Australia's multi-lingual multicultural workforce can increase productivity and help businesses gain a competitive advantage.<sup>19</sup>

Click here for 'Migration - Benefiting Australia' Conference proceedings: DIMIA, *Migration: Benefiting Australia*, Conference Proceedings, Sydney 7-8 May 2002, at:

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## Employment

The research outlined below shows that immigration does not cause higher unemployment. In fact, migrants create jobs by increasing demand for goods and services. Research also shows that the ability of migrants to participate in the workforce increases the longer they live in Australia.

- In August 2004, the unemployment rate for all people born overseas was 5.3% compared with 5.5% for those born in Australia.<sup>20</sup>
- While the unemployment rate of new migrants immediately after their arrival is higher than the Australian average, their unemployment rate falls significantly over time. Long-established migrants (23 years residence or more) have lower rates of unemployment than the Australian-born (4.2 % compared with 6%).<sup>21</sup>
- Recent research suggests that the success with which new migrants find jobs is also related to their proficiency in English, age, skill level and qualifications and migration category.<sup>22</sup>
- More than half (55%) of all migrants arrive in Australia with a post-school qualification. However, less than half (48%) of all migrants who arrive with a skilled or basic vocational qualification have their qualification recognised in Australia. Migrants from Southeast Asia are especially disadvantaged: less than one-third (30%) of migrants with post-school qualifications obtained in the Southeast Asian region had their qualification recognised in Australia.<sup>23</sup>

## Welfare system

- Migrants must wait two years before they can access most social security payments, including unemployment assistance, sickness benefits or student allowances. This waiting period does not apply to refugees and other humanitarian entrants on Permanent Protection Visas.<sup>24</sup>
- Sponsors of some family migrants must lodge a bond ensuring repayment to the government if the migrant claims social security benefits within two years of arrival. This bond is between \$1,500 and \$3,500 per person.<sup>25</sup>
- Most new migrants are not eligible for age or disability pensions until 10 years after their arrival in Australia.<sup>26</sup>



- In an effort to reduce health and welfare costs associated with aged migrants, *parent migration* was dramatically reduced from 8,890 in 1995-96 to a planned intake of 500 in 2001-02.<sup>27</sup> In 2003, a new parent visa category (the Contributory Parent Visa) was introduced for applicants who are able to pay \$25,000 for a visa (in addition to a \$10,000 bond).<sup>28</sup>

## Population

Since Federation, natural population increase (the number of births minus the number of deaths) has generally contributed more to Australia's annual population growth than migration. However, with declining fertility and an ageing population, this is likely to change over the next few decades. Immigration will become a more important influence on population growth or decline.

In recent years, there has been much debate about the need for a population policy and the role of migration in such a policy. Australia's population is an ageing one. This demographic shift has important long-term implications for Australia's future economic growth and overall living standards. Research suggests that migration can help counter the negative effects of an ageing population.<sup>29</sup>

Click here - to read '*The Impact of Immigration on the Ageing of Australia's Population Proceedings*' of the Policy Implications of the Ageing of Australia's Population Conference, Melbourne, 1999.

<http://www.immi.gov.au/population/ageing.htm>

Click here - to read the Papers from the Australian Population Summit, Melbourne, 2002.

<http://www.ozprospect.org/communique.html>

## Environment

Concern has grown in recent years about the impacts of population growth on the natural environment. Critics of current levels of migration argue that Australia does not have the 'carrying capacity' for a larger population.<sup>30</sup> Others argue that Australia's environmental problems would not disappear with a smaller population because environmental damage is caused by other factors such as wasteful consumption patterns and poor management of natural resources.<sup>31</sup>

Click here for Future Dilemmas: Options to 2050 for Australia's population, technology, resources and environment.

<http://www.cse.csiro.au/research/futures/>

## Crime

Current research shows no evidence of a causal connection between crime and ethnicity: some overseas-born groups have lower crime rates and some have higher crime rates than the Australian-born population.<sup>32</sup> This does not mean that crime is linked to ethnicity. Overall, the crime rate of the overseas born population has been lower than that of the Australian born population. Factors such as unemployment, education, socio-economic disadvantage and lack of access to services have more bearing than ethnicity on crime rates.<sup>33</sup>



- In 2002, people born in Australia were imprisoned at a rate of 156 per 100,000 while those born overseas were imprisoned at a rate of 146 per 100,000. <sup>34</sup>
- As of 30 June 2004, 74% of all prisoners were born in Australia. Persons born in Vietnam were the next largest birthplace group (2.8%), followed by the UK and Ireland (2.62%) and New Zealand (2.5%). <sup>35</sup>

## 6. How diverse are Australians?

Many years of migration from a range of countries has made Australia culturally diverse.

### Overseas-born

- In the 2001 Census, about one-fifth of Australia's population stated that they were born overseas. <sup>36</sup> At June 2002, overseas born residents in Australia comprised of 4.6 million people, remaining at approximately 23% of the total population. <sup>37</sup>
- Within the western world, Australia has a high proportion of overseas-born persons (23.1%). This is higher than New Zealand (18.7%) and Canada (18.4%), and much higher than the United States (11.4%). <sup>38</sup>
- At the 2001 Census, of the overseas-born population, most came from the United Kingdom (25.4%), New Zealand (8.7%) and Italy (5.4%). <sup>39</sup>
- Western Australia has the highest proportion of residents born overseas (28.5%). New South Wales and Victoria have almost equal proportions of overseas-born people (24.8% and 24.6% respectively) followed by the ACT (22.6 %) and South Australia (21.2 %), Queensland (18.0 %), NT (15.5 %) and Tasmania (10.5%). <sup>40</sup>

Click here - for information about Australians born in the Middle East and North Africa

[http://www.humanrights.gov.au/racial\\_discrimination/isma/fact\\_arab.html](http://www.humanrights.gov.au/racial_discrimination/isma/fact_arab.html)

### Ancestry

- In 2001, there were 3,477,189 Australian born people with one or both parents born overseas (25% of population). <sup>41</sup>
- In the 2001 Census, the three most common ancestries that people identified with were Australian (35.9%), English (33.9%) and Irish (10.2%). <sup>42</sup>
- Other common ancestries included Italian (4.3%), German (4.0%), Chinese (3.0%), Scottish (2.9%), Greek (2.0%), Dutch (1.4%), Lebanese (0.9%) and Vietnamese (0.8%). <sup>43</sup>

### Language

- In 2001, 16% of Australians spoke a language other than English in their homes. This represents an increase of 8% since 1996. <sup>44</sup>
- Collectively, Australians speak over 200 languages. In 2001, Italian (with 353,605 speakers) was the most popular language other than English spoken at home followed by Greek (263,718), Cantonese (225,307), Arabic (209,372) and Vietnamese (174,236). <sup>45</sup>



## Religion

- Christians make up 68% of the population. Two major Christian denominations (Anglicans and Catholics) account for almost half (47.3%) of the population. Buddhism is the largest non-Christian religion and accounts for 1.9% of the population. Islam is the second largest non-Christian religion at 1.5% of the population. 15% of Australians said they had no religion.<sup>46</sup>

Click here - for information about Australian Muslims

[http://www.humanrights.gov.au/racial\\_discrimination/isma/fact\\_muslim.html](http://www.humanrights.gov.au/racial_discrimination/isma/fact_muslim.html)

## 7. What is multiculturalism?

Australia is made up of people from diverse cultures and backgrounds. Multiculturalism celebrates this diversity and recognises the challenges and opportunities that come with it. The main principles of Australia's multicultural policy are:

- *Responsibilities of all* - all Australians have a civic duty to support those basic structures and principles of Australian society which guarantee us our freedom and equality and enable diversity in our society to flourish.
- *Respect for each person* - subject to the law, all Australians have the right to express their own culture and beliefs and have a reciprocal obligation to respect the right of others to do the same.
- *Fairness for each person* - all Australians are entitled to equality of treatment and opportunity. Social equity allows us all to contribute to the social, political and economic life of Australia, free from discrimination, including on the grounds of race, culture, religion, language, location, gender or place of birth.
- *Benefits for all* - all Australians benefit from productive diversity, that is, the significant cultural, social and economic dividends arising from the diversity of our population. Diversity works for all Australians.<sup>47</sup>

## Australian citizenship

Taking up Australian citizenship is one way migrants show their willingness to participate fully in Australia's democratic institutions and carry out their 'civic duty'.

Table 7.1 shows the citizenship take-up rate for specific birthplace groups based on the 2001 census. The overall citizenship take-up rate for all overseas-born Australians eligible to become citizens was 74% at the time of the census.<sup>48</sup>

In 2003-04, people from over 150 different countries took out Australian citizenship, the majority of whom came from the United Kingdom and New Zealand.<sup>49</sup>

**Table 7.1: Citizenship rates in 2001 for overseas-born people resident in Australia for two years or more.**

Country of birth	Citizenship rate
Greece	97%
Vietnam	95%



Philippines	90%
China	80%
Italy	80%
Netherlands	78%
Germany	77%
United Kingdom	66%
New Zealand	38%
Total overseas-born	74%

**Source:** Australian Bureau of Statistics, *Year Book Australia 2005*, Table 5.67 Citizenship Rates, overseas-born people resident in Australia for two years or more – 2001, at:

<http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/bad379221f6294e8ca256f7200832f2a!OpenDocument>

Did you know?

- There was no notion of Australian citizenship until the *Nationality and Citizenship Act 1948* came into effect in 1949. Prior to that, Australians were 'British subjects'. British subjects who were born in Australia or had lived in Australia since 26 January 1944 automatically became Australian citizens. Everyone else, including British subjects, had to apply for Australian citizenship.<sup>50</sup>
- Between 1949 and 1973, the rules about who could apply to become an Australian citizen varied according to the level of knowledge of the English language and ethnic origin of the person.<sup>51</sup>
- In this period, British migrants could apply for Australian citizenship after one year's residence in Australia. They could also enter Australia without a visa and were eligible to access public housing, access the same welfare benefits as Australian citizens and to vote in Australian elections.<sup>52</sup>
- In the same period, non-British European migrants could only apply for Australian citizenship if they had lived in Australia for five years and had an 'adequate knowledge of the rights, responsibilities and privileges of Australian citizenship'.<sup>53</sup>
- Between 1949 and 1956, Australian residents who were neither British nor European could not apply for Australian citizenship at all. In 1956, this rule changed to allow non-Europeans who had lived in Australia for 15 years or more to apply for Australian citizenship.<sup>54</sup>
- In 1973, distinctions between European and non-European migrants were removed from Australian citizenship law altogether.<sup>55</sup>
- British subjects who were on the Australian electoral roll before January 1984 can still vote in Australian elections even though they are not Australian citizens.<sup>56</sup>
- From 1948 to 1987, the *Nationality and Citizenship Act* defined an alien as 'a person who does not have the status of a British subject and is not an Irish citizen or a protected person'.<sup>57</sup>



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DIMIA, *Fact Sheet 90 - Australian Citizenship*,  
<http://www.immi.gov.au/facts/90citizenship.htm>



## Notes

<sup>1</sup> Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), *Immigration Update 2003-2004*, Table 1.1 Permanent Additions to the Resident Population, January 2005, p7, at: [http://www.immi.gov.au/statistics/publications/immigration\\_update/Update\\_June04.pdf](http://www.immi.gov.au/statistics/publications/immigration_update/Update_June04.pdf)

Note: This information also provided in simpler (non-tabled form) at page 1 of document.

<sup>2</sup> Ibid. Note: The DIMIA definition of 'settlers' includes: persons arriving in Australia from overseas who hold permanent visas, regardless of stated intended period of stay, New Zealand citizens who indicate an intention to settle, and those who are otherwise eligible to settle (eg. overseas born children of Australian citizens). Note also: The total figure for 'Overseas Migrants' does not include Special Eligibility (207) settler arrivals.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid

<sup>5</sup> Ibid. Note: the total figure for 'Onshore Migrants' does not include 'Special Eligibility' (730 onshore) numbers.

<sup>6</sup> DIMIA, *Fact Sheet 1 - Immigration - the Background* (revised by DIMIA 4 November 2001, updated by DIMIA 18 June 2004) at: <http://www.immi.gov.au/facts/01backqd.htm> (accessed 22 February 2005)

<sup>7</sup> DIMIA, *Fact Sheet 8, Abolition of the White Australia Policy* (revised by DIMIA 6 October 2004, updated by DIMIA 7 October 2004) at: <http://www.immi.gov.au/facts/08abolition.htm> (accessed 29 April 2005).

<sup>8</sup> DIMIA, *Immigration Update 2003-04*, Jan 2005, Table 1.5 Permanent Additions by Country of Birth, 2003-04, pp 10-12, at: [http://www.immi.gov.au/statistics/publications/immigration\\_update/Update\\_June04.pdf](http://www.immi.gov.au/statistics/publications/immigration_update/Update_June04.pdf)

<sup>9</sup> The points test awards points for skills, age, language ability, employment experience and various other categories. The type of visa applied for will determine the number of points needed to qualify. For more information, see; [http://www.immi.gov.au/migration/skilled/advice\\_doc/gn\\_pointstest.htm](http://www.immi.gov.au/migration/skilled/advice_doc/gn_pointstest.htm)

<sup>10</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, Figure 2.3 Migration Program Outcomes 1996-97 to 2004-05 (planned), p 21, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/ch2\\_pt1.pdf](http://www.immi.gov.au/statistics/publications/popflows2003_4/ch2_pt1.pdf)

<sup>11</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, Figure 2.3 Migration Program Outcomes 1996-97 to 2004-05 (planned), p 21, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/ch1\\_pt1.pdf](http://www.immi.gov.au/statistics/publications/popflows2003_4/ch1_pt1.pdf)

<sup>12</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p 26, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/ch2\\_pt3.pdf](http://www.immi.gov.au/statistics/publications/popflows2003_4/ch2_pt3.pdf)

<sup>13</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p 26, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/ch2\\_pt3.pdf](http://www.immi.gov.au/statistics/publications/popflows2003_4/ch2_pt3.pdf)





<sup>14</sup> For example, in 2001-02 only 500 visas were available for Working Age and Aged Parents. On 5 March 2003, a new 'contributory' parent visa category was introduced allowing for up to 3,500 parents to migrate on the basis of a higher health charge and social security bond. For this category, applicants must pay \$25,000 for a permanent visa and \$15,000 for a temporary visa, along with a \$10,000 bond. See: DIMIA, *Fact Sheet 31 – Family Stream Migration – Parent Category Visas* (revised by DIMIA 28 September 2004, updated by DIMIA 30 September 2004) at: <http://www.immi.gov.au/facts/31parents.htm> (accessed 22 February 2005).

See also DIMIA, *Charges (Fees) – Assurance of Support* (updated by DIMIA 21 January 2005) at: [http://www.immi.gov.au/allforms/990i/990i\\_aos.htm](http://www.immi.gov.au/allforms/990i/990i_aos.htm) (accessed 10 May 2005).

<sup>15</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p 26, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/ch2\\_pt3.pdf](http://www.immi.gov.au/statistics/publications/popflows2003_4/ch2_pt3.pdf)

<sup>16</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, Figure 2-19 'Humanitarian Program Outcomes: Visas Granted 1994-95 to 2003-04', p 30, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/ch2\\_pt4.pdf](http://www.immi.gov.au/statistics/publications/popflows2003_4/ch2_pt4.pdf)

<sup>17</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p 87, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/index.htm](http://www.immi.gov.au/statistics/publications/popflows2003_4/index.htm)

<sup>18</sup> Chris Richardson, *The Economics of Migration*, Paper delivered at Migration: Benefiting Australia Conference Sydney, May 2002, pp 115 – 119, at: <http://www.immi.gov.au/research/publications/conference02/index.htm>

<sup>19</sup> DIMIA, *Fact Sheet 7 – Productive Diversity: Australia's Competitive Advantage* (revised by DIMIA 26 November 2003, updated by DIMIA 11 March 2004) <http://www.immi.gov.au/facts/07productive.htm> (accessed 16 February 2005).

<sup>20</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p81, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/index.htm](http://www.immi.gov.au/statistics/publications/popflows2003_4/index.htm) and DIMIA, *Fact Sheet 14 – Migrant Labour Market Outcomes* (revised by DIMIA 22 April 2005, updated by DIMIA 25 April 2005) at: <http://www.immi.gov.au/facts/14labour.htm> (accessed 10 May 2005).

<sup>21</sup> Deborah Cobb-Clark, *Immigration and unemployment: New Australian evidence*, in James Jupp (ed) *Immigration and Multiculturalism: Global Perspectives*, Committee for Economic Development of Australia, November 1999, p78. See also DIMIA, *Fact Sheet 14 – Migrant Labour Market Outcomes*, (revised By DIMIA 22 April 2005, updated by DIMIA 26 April 2005) at: <http://www.immi.gov.au/facts/14labour.htm> (accessed 10 May 2005). See also DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, pp84-85, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/index.htm](http://www.immi.gov.au/statistics/publications/popflows2003_4/index.htm)

<sup>22</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p87, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/index.htm](http://www.immi.gov.au/statistics/publications/popflows2003_4/index.htm)

<sup>23</sup> See Australian Bureau of Statistics, *Labour Force Status and Other Characteristics of Migrants* (Catalogue No. 6250.0), 8 September 2000, p2, at: <http://www.abs.gov.au/Ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/e92ea270a32af8f1ca256953007d9afa!OpenDocument>

Note: This data is based on a survey for adult migrants who obtained permanent residency status from 1980 to 1999.



<sup>24</sup> DIMIA, *Income support and other government benefits*, (updated by DIMIA 17 March 2004) at: [http://www.immi.gov.au/settle/work/income\\_support.htm](http://www.immi.gov.au/settle/work/income_support.htm) (accessed 29 April 2005).

<sup>25</sup> DIMIA, *Fact Sheet 31- Family Stream Migration – Parents* (revised by DIMIA 28 September 2004, updated by DIMIA 30 September 2004) at: <http://www.immi.gov.au/facts/31parents.htm> (accessed 22 February 2005).

<sup>26</sup> DIMIA, *Income support and other government benefits*, (updated by DIMIA 17 March 2004) at: [http://www.immi.gov.au/settle/work/income\\_support.htm](http://www.immi.gov.au/settle/work/income_support.htm) (accessed 29 April 2005).

<sup>27</sup> DIMIA, *Population Flows: Immigration Aspects*, 2001 Edition, February 2002, Figure 2-3 Migration program Visas Granted 1992-93 to 2001-02, p 17, at: [http://www.immi.gov.au/statistics/publications/popflows2001/chapter2\\_1.pdf](http://www.immi.gov.au/statistics/publications/popflows2001/chapter2_1.pdf)

<sup>28</sup> Note: The introduction of this category increases the number of places available for parents to migrate each year on the basis that they or their sponsor make a fairer contribution to their health or welfare costs. 4,930 parent category visas were granted in 2003-04 including both parent visa and contributory parent visa. In 2004-05, a limit of 4,500 places will be made. See DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p 28, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/index.htm](http://www.immi.gov.au/statistics/publications/popflows2003_4/index.htm)

<sup>29</sup> Peter McDonald & Rebecca Kippen, *The Impact of Immigration on the Ageing of Australia's Population*, DIMIA, May 1999, p21, at: <http://www.immi.gov.au/population/ageing.htm>

<sup>30</sup> Tim Flannery, *The Future Eaters: an ecological history of the Australasian lands and people*, George Braziller, 1995, p369-375.

<sup>31</sup> Mary Kalantzis and Bill Cope, 'Why Are We Closing the Door to Migrants?' *The Sun Herald*, 15 March 1998, at: <http://edoz.com.au/cwcc/docs/publications/media/desc14.html>

<sup>32</sup> See: Australian Bureau of Statistics, *Prisoners in Australia* (Catalogue No. 4517.0), 22 January 2004, p15.

<sup>33</sup> See: Mukherjee, *Ethnicity and Crime, Trends & Issues in Crime and Criminal Justice* No. 117, Australian Institute of Criminology, Canberra, 1999, at: <http://www.aic.gov.au/publications/tandi/ti117.pdf>

<sup>34</sup> See: Australian Bureau of Statistics, *Prisoners in Australia* (Catalogue No. 4517.0), 30 June 2002. Supplementary advice from the Australian Bureau of Statistics National Centre for Crime and Justice Statistics. Note: Comparison of imprisonment rates of Australian and overseas-born persons should take into account:

- The country of birth data for the prisoner population contains a high proportion of 'unknown' birthplace (9% for 2002).
- Estimates of the population are made for a selected group of countries only.
- The denominator of the overseas-born imprisonment rate has been derived by subtracting the estimated Australian born adult population from the total adult population.
- There are large differences in the imprisonment rates for different overseas countries of birth. These differences could be due to a number of factors including age and sex components of each of these populations.



- <sup>35</sup> Australian Bureau of Statistics, *Prisoners in Australia* (Catalogue No. 4517.0) 23 December 2004, at: <http://www.abs.gov.au/ausstats/abs%40.nsf/e8ae5488b598839cca25682000131612/8d5807d8074a7a5bca256a6800811054!OpenDocument>
- <sup>36</sup> DIMIA, *The People of Australia: Statistics from the 2001 Census*, Table 1, Australian Key Facts, September 2003, p1, at: [http://www.immi.gov.au/research/publications/people\\_of\\_australia.pdf](http://www.immi.gov.au/research/publications/people_of_australia.pdf)
- <sup>37</sup> Australian Bureau of Statistics, *Migration, Australia* (Catalogue No. 3412.0), 28 April, 2004, p2, at: <http://www.abs.gov.au/Ausstats/abs@.nsf/0/2C6D9DB6B7EF7C97CA2568A9001393D5?Open>
- <sup>38</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p16, at: [http://www.immi.gov.au/statistics/publications/popflows2001/chapter2\\_1.pdf](http://www.immi.gov.au/statistics/publications/popflows2001/chapter2_1.pdf)
- <sup>39</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p4, at: [http://www.immi.gov.au/statistics/publications/popflows2001/chapter2\\_1.pdf](http://www.immi.gov.au/statistics/publications/popflows2001/chapter2_1.pdf)
- <sup>40</sup> Australian Bureau of Statistics, *Australian Social Trends 2004* (Catalogue No. 4102.0), p3, at: <http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/684599665c8891d7ca256e9700057249!OpenDocument>
- <sup>41</sup> Australian Bureau of Statistics, *Year Book Australia 2005, Population Country of birth* Table 5.35 Birthplace of Parents of Australian Born People - 2001 (Catalogue No. 1301.0) p2, at: <http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/2d7a4bf79f53d825ca256f7200832f90!OpenDocument>
- <sup>42</sup> DIMIA, *The People of Australia: Statistics from the 2001 Census*, 2003, Table 11, Ancestry, p54, at: [http://www.immi.gov.au/research/publications/people\\_of\\_australia.pdf](http://www.immi.gov.au/research/publications/people_of_australia.pdf)
- <sup>43</sup> Ibid.
- <sup>44</sup> Australian Bureau of Statistics, *Year Book Australia 2005, Population Languages*, at: <http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/dfd8c90c1a541efeca256f720083300a!OpenDocument>.
- <sup>45</sup> DIMIA, *The People of Australia: Statistics from the 2001 Census*, 2003, Table 6, Languages Spoken, p20, at: [http://www.immi.gov.au/research/publications/people\\_of\\_australia.pdf](http://www.immi.gov.au/research/publications/people_of_australia.pdf)
- <sup>46</sup> Australian Bureau of Statistics, *Selected Social and Housing Characteristics, 2001 Census* (Catalogue No. 2015.0), 1 August 2002, at: <http://www.abs.gov.au/ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/1ea78afe3de2edcaca256bda0073eb53!OpenDocument>. Note: around one quarter of the population stated they had no religion or chose not to answer the religion question at the 2001 Census. See also DIMIA, *The People of Australia: Statistics from the 2001 Census*, Table 9, Religious Affiliation, September 2003, p43, at: [http://www.immi.gov.au/research/publications/people\\_of\\_australia.pdf](http://www.immi.gov.au/research/publications/people_of_australia.pdf)
- <sup>47</sup> DIMIA, *Population Flows; Immigration Aspects*, 2003-04 Edition, January 2005, p 91, at: [http://www.immi.gov.au/statistics/publications/popflows2001/chapter2\\_1.pdf](http://www.immi.gov.au/statistics/publications/popflows2001/chapter2_1.pdf)  
See also: Commonwealth of Australia, *Multicultural Australia: United in Diversity*, 2003, p6, at: [http://www.immi.gov.au/multicultural/inc/pdf/doc/united\\_diversity/united\\_diversity.pdf](http://www.immi.gov.au/multicultural/inc/pdf/doc/united_diversity/united_diversity.pdf)



<sup>48</sup> Australian Bureau of Statistics, *Year Book Australia, Population Citizenship*, January 2005 (Catalogue No. 1301.0), at: <http://www.abs.gov.au/Ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/bad379221f6294e8ca256f7200832f2a!OpenDocument>. Note: Generally, people are eligible for Australian citizenship when they have been present in Australia as a permanent resident for a total of two years in the previous five years, including 12 months in the two years immediately before they apply.

For more information see: DIMIA, *Fact Sheet 90 - Australian Citizenship*, (revised by DIMIA 20 January 2005, updated by DIMIA 1 February 2005) at: <http://www.immi.gov.au/facts/90citizenship.htm> (accessed 22 February 2005).

<sup>49</sup> DIMIA, *Fact Sheet 90 - Australian Citizenship* (revised by DIMIA 20 January 2005, updated by DIMIA 1 February 2005) at: <http://www.immi.gov.au/facts/90citizenship.htm> (accessed 22 February 2005).

Note: Australian citizens may hold the citizenship of another country (dual citizenship) or more than 2 countries (plural citizenship). Recent changes to citizenship legislation, as of 4 April 2002, means that Australian citizens can acquire another citizenship and keep their Australian citizenship.

<sup>50</sup> Ann-Mari Jordens, *Redefining Australians: Immigration, and National Identity*, Hale & Iremonger, Sydney, 1995, pp6-7.

<sup>51</sup> Ibid. pp16-24 & 159.

<sup>52</sup> Ibid. pp44-45, 55, 92, 159.

<sup>53</sup> Ibid. pp20-22.

<sup>54</sup> Ibid. pp20-22.

<sup>55</sup> Ibid. pp157.

<sup>56</sup> Ibid. pp159.

<sup>57</sup> Ibid. p1.



## Questions and Answers About Refugees & Asylum Seekers

### 1. Who is a refugee?

According to the United Nations *Convention and Protocol relating to the Status of Refugees* (also called the Refugee Convention), a refugee is someone who is outside their own country and cannot return due to a well-founded fear of persecution because of their:

- race
- religion
- nationality
- membership of a particular social group or
- political opinion<sup>1</sup>

A person becomes a refugee under international law once she or he crosses an international border and is assessed as meeting the definition of a refugee, either by a national government or an international agency such as the United Nations High Commissioner for Refugees (UNHCR).

In popular use, the term refugee is often interpreted more broadly than its legal definition to include all people who flee their homes seeking refuge from harm. There are many circumstances which could force someone to flee to safety, including war or civil strife, domestic violence, poverty and natural or man-made disasters. However, the Refugee Convention only recognises people as refugees if they are displaced from their home country because of persecution on the basis of their race, religion, nationality, membership of a particular social group or political opinion.

Two important points to note about this definition are:

- a person has to be outside their country of nationality or usual residence when making a refugee application; and
- the fear of persecution has to be well founded - that is, the person fleeing must have experienced the persecution or be likely to experience it if he or she returns.

### How do refugees differ from migrants?

Refugees are not in the same situation as migrants, although the two groups are often confused. Migrants choose when to leave their country, where they go and when they return. Refugees flee their country for their own safety and cannot return unless the situation that forced them to leave improves.

### How many refugees are there worldwide?

There are about **9.7 million** refugees around the world. Asia hosts more than one third of the world's refugees (3.6 million), followed by Africa (3.1 million), Europe (2.2 million) and North America (0.58 million).<sup>2</sup>

In 2002, the number of refugees globally dropped by nearly 14% from 12 million to 10.4 million compared with the previous year. This was principally because of the return of some 2 million civilians to Afghanistan, with 2.5 million Afghan refugees remaining in exile.<sup>3</sup>

At the end of 2003, the global refugee population dropped again to 9.7 million, principally because





of the return of nearly 650,000 Afghans from neighbouring Pakistan and Iran. Two million Afghan refugees remained in exile.<sup>4</sup>

Less developed countries are both a major source and a major destination for refugees. Between 1992 and 2001, 86% of the world's refugees came from developing countries and 72% of the global refugee population were hosted in developing countries.<sup>5</sup>

In 2003:

- Afghanistan was by far the largest country of origin of refugees (2.1 million). Other major origins of refugee populations were Sudan, Burundi, DR Congo, Palestine, Somalia, Iraq, Vietnam, Liberia and Angola.<sup>6</sup>
- The top five host countries for refugees were Pakistan (1.1 million), Iran (985,000), Germany (960,000), Tanzania (650,000), and the United States (452,500).<sup>7</sup>

## 2. What is Australia's policy on refugees?

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), through its Humanitarian Program, aims to:

- assist people in humanitarian need overseas for whom resettlement in another country is the only available option; and
- comply with Australia's international obligations onshore under the Refugee Convention.

The program has two main parts: off-shore resettlement and on-shore protection.

### Off-shore resettlement

The off-shore resettlement program is for refugees and other 'humanitarian entrants' who apply for a visa from outside Australia.

There are two categories of permanent visas and two categories of temporary visas under the off-shore component of the Humanitarian Program.

#### a) Permanent off-shore humanitarian visas

- **Refugee Visas:** for people outside their home country who satisfy the Refugee Convention definition of 'refugee' and who are in need of resettlement because they cannot return to their own country or stay where they are.<sup>8</sup>
- **Special Humanitarian Program Visas:** for people outside their home country who have experienced substantial discrimination amounting to a gross violation of human rights in their home country. A proposer, who is an Australian citizen, permanent resident, or eligible New Zealand citizen, or an organisation that is based in Australia, must support such an application for entry.<sup>9</sup>

#### b) Temporary off-shore humanitarian visas

Changes to the Migration Act 1958 (Cth) (Migration Act) introduced in September 2001 created two new categories of temporary off-shore humanitarian visas. These new visas were introduced to encourage asylum seekers to remain in their country of first asylum, that is, the first safe country where they can seek and obtain effective protection outside their home country. Both these visas





are only available to asylum seekers who have spent less than seven days in a country where they could have sought and obtained protection.<sup>10</sup>

- **Secondary Movement Relocation Visas:** for people outside their home country who are subject to persecution or substantial discrimination in their home country (or women registered as being 'of concern' to the United Nations High Commission for Refugees (UNHCR). This visa is available to asylum seekers who have moved from a safe first country of asylum but have not yet entered Australia. This temporary visa is valid for five years and people who hold this visa may apply for a permanent protection visa after four and a half years if there is a continuing need for protection.
- **Secondary Movement off-shore Entry Visas:** for people outside their home country who are subject to persecution or substantial discrimination in their home country (or women registered as being 'of concern' to the UNHCR). This visa is available to asylum seekers who enter Australia at a place outside Australia's migration zone (such as Christmas Island, Ashmore Reef or the Cocos Islands). This temporary visa is valid for three years and the people who hold this visa are not entitled to permanent residence. Holders of this visa are eligible for successive temporary protection visas, if there is a continuing protection need.

Click below for further details of the four kinds of off-shore resettlement visas.

DIMA, Fact Sheet 60 - Australia's Refugee and Humanitarian Program at:

<http://www.immi.gov.au/facts/60refugee.htm>

DIMIA, Migrating as a Refugee or Humanitarian Entrant at:

[http://www.immi.gov.au/refugee/migrating\\_refugee.htm](http://www.immi.gov.au/refugee/migrating_refugee.htm)

### On-shore protection

People can be recognised as refugees once they are already in Australia by applying for a 'Protection Visa' (PV). To get a Protection Visa, asylum seekers must show that they satisfy the Refugee Convention definition of 'refugee' and that Australia has an obligation to protect them. Australia is only obliged to protect refugees if:<sup>11</sup>

- The applicant has a well founded fear of persecution on grounds covered by the Convention.
- The applicant does not have effective protection in another country.
- The applicant is not otherwise excluded from the operation of the Convention (eg. because of security concerns).

Protection Visas are either permanent or temporary depending on how the refugee entered Australia.

- **Permanent Protection Visas (PPV):** for people who arrive in Australia with a valid temporary visa (such as a tourist or student visa) and are found to be refugees that Australia is obliged to protect. Applicants receive a bridging visa upon lodging a PPV application. In most cases, the bridging visa allows the applicant to remain lawfully in the community until the PPV application is finalised. Some bridging visas allow the applicant to work in Australia while others do not have work rights attached. PPV applicants are also eligible for financial assistance for basic food, accommodation and health care while their applications are being processed.<sup>12</sup>



- **Temporary Protection Visas (TPV):** for people who arrive in Australia without a valid visa and are found to be refugees that Australia is obliged to protect. People applying for this type of visa must also meet health and character requirements. The TPV gives them temporary residence for three years. After three years, depending on when and how they arrived in Australia, some can apply for a PPV while others can only reapply for another TPV. The TPV provides only limited access to government assistance for settlement compared with other protection visas. TPV holders cannot automatically sponsor their families to join them in Australia and they need special approval to re-enter Australia if they leave. Since its introduction in October 1999 to June 2004, a total of 8,801 people have been granted TPVs.<sup>13</sup>

### **What are Temporary Protection Visas (TPVs)?<sup>4</sup>**

Click here for more information about the history of Australia's refugee policies.

[http://www.aph.gov.au/library/pubs/online/Refugees\\_contents.htm](http://www.aph.gov.au/library/pubs/online/Refugees_contents.htm)

Asylum seekers who arrive in Australia without a valid visa and who are found to be refugees according to Australia's migration laws get a temporary protection visa (TPV). The Federal Government introduced TPVs in October 1999 in response to growing numbers of 'unauthorised' boat arrivals.<sup>5</sup>

The TPV allows for three years temporary residence in Australia. After three years, depending on when and how they entered Australia, some TPV holders can apply for a Permanent Protection Visa (PPV) while others can only reapply for another TPV.

### **Changes to the law: 27 September 2001**

Before 27 September 2001, refugees who were given TPVs in the first instance could apply for a PPV. To get a PPV, they had to prove that Australia still owed them protection and that they had held a TPV for 30 months.<sup>6</sup> Changes to the Migration Act which came into effect on 27 September 2001 have made it more difficult for refugees who hold TPVs to eventually get permanent protection.

### **'7 day rule'**

TPV holders who apply for permanent protection on or after 27 September 2001 cannot get a PPV if: since leaving their home country, they lived for 7 days or more in a country where they could have sought and obtained effective protection (either from the government of the country or through an office of the UNHCR located in that country). All they can get is another TPV - provided they can prove Australia still owes them protection and they have held a TPV for 30 months. The '7 day rule' can be waived if the Minister for Immigration considers waiver is in the public interest.

### **Further changes to the law: August 2004**

On 27 August 2004, new measures commenced in relation to TPV holders and temporary off-shore humanitarian visa holders (THV). These measures involve:

1. a reintegration assistance package for current and former TPV and THV holders who volunteer to return to their country of origin. The reintegration package includes a cash grant of \$2,000 per asylum seeker (up to \$10,000) and the cost of airfares to their country of citizenship or residence.<sup>7</sup>



2. a 'Return Pending' Visa (RPV) to provide a further 18 months stay for those eligible people who are found to no longer be owed protection, and have no other lawful basis to remain, to make arrangements to return home. The 18-month period was introduced to enable RPV holders to make arrangements to depart Australia. Those granted the RPV will maintain access to the same benefits, and be subject to the same visa limitations, attached to the previously held TPV or THV.<sup>8</sup>
3. removal of barriers to apply for a range of non-humanitarian onshore visas which were not previously available to TPV and THV holders.<sup>9</sup>

The new measures apply to the following temporary visas in the humanitarian program:

- Secondary Movement off-shore Entry (Temporary)
- Secondary Movement Relocation (Temporary)
- Temporary Protection Visa (Onshore)

The RPV is available to former, current and future TPV and THV holders. Eligibility to apply for non-humanitarian visas and the reintegration assistance package is restricted to current and former TPV and THV holders who were in Australia when the regulations commenced on 27 August 2004.<sup>10</sup>

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## Notes

4. See DIMIA, Fact Sheet 64 Temporary Protection Visas (produced by DIMIA 20 November 2003, updated by DIMIA 11 March 2004) (accessed 15 February 2005).

5. See also: DIMIA, Fact Sheet 64a New Measures for Temporary Protection and Temporary Humanitarian Visa Holders (produced by DIMIA 30 August 2004, updated by DIMIA 19 October 2004) (accessed 15 February 2005).

6. See also: DIMIA, Fact Sheet 65 New Humanitarian Visa System (revised by DIMIA 19 July 2002, updated by DIMIA 11 March 2004) (accessed 15 February 2005).

7. DIMIA, Fact Sheet 64b - Reintegration Package for Temporary Protection, Temporary Humanitarian and Return Pending Visa Holders (updated by DIMIA 9 September 2004) (accessed 15 February 2005).

8. DIMIA, Fact Sheet 64c - Return Pending Visa (updated by DIMIA 9 September 2004) (accessed 15 February 2005).

9. DIMIA, Fact Sheet 64d - New Onshore Visa Options for Temporary Protection and Temporary Humanitarian Visa Holders (updated by DIMIA 9 September 2004) (accessed 15 February 2005).

10. DIMIA, Fact Sheet 64a New Measures for Temporary Protection and Temporary Humanitarian Visa Holders (produced by DIMIA 30 August 2004, updated by DIMIA 19 October 2004) (accessed 15 February 2005).



### 3. How many refugees come to Australia?

Each year, DIMIA sets a quota for the number of visas it grants under the Humanitarian Program. This quota includes off-shore and on-shore visas. This quota has remained roughly the same (about 12,000 visas per annum) for the past seven years. In 2003-04, Australia granted a total of 13,851 visas under the Humanitarian Program. This comprised 11,802 visas granted to persons overseas and 2,049 visas granted to people in Australia.<sup>14</sup>

**Table 3.1: Humanitarian Program, visa grants by category, 1998-99 to 2003-04**

Category	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Refugee	3,988	3,802	3,997	4,160	4,376	4,134
Special Humanitarian	4,348	3,051	3,116	4,258	7,280	8,297**
Special Assistance	1,190	649	879	40	NA	NA
Onshore Protection	1,830	2,458	5,577	3,885	866	788
Safe Haven	NA	5,900	NA	NA	NA	NA
Temporary Humanitarian Concern	NA	NA	164	6	3	2
Total	11,356	15,860*	13,733	12,349	12,525	13,851

\*Note: This figure includes 5,900 Safe Haven Visas, comprising 4,000 grants to Kosovar refugees off-shore and 1,900 grants to the East Timorese refugees on-shore.

\*\* Note: This figure includes 1,228 grants to the East Timorese refugees onshore.

Source: DIMIA, *Fact Sheet 60 - Australia's Refugee and Humanitarian Program*, <http://www.immi.gov.au/facts/60refugee.htm> (accessed 15 February 2005)

**Table 3.2: Humanitarian Program Outcomes 200304**

<b>off-shore</b>	Refugee	4,134
	Special Humanitarian Program (SHP)	7,668
	Subtotal	11,802
<b>Onshore</b>	Temporary Protection Visa (TPV)	185
	Permanent Protection Visa (PPV)	603
	THCV*	2
	Onshore SHP**	1,259
	Subtotal	2,049



<b>Program Total</b>	13,851
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\* Temporary Humanitarian Concern Visas granted to Safe Haven visa holders who required medical treatment in Australia.

\*\* Includes 1,228 visas granted to East Timorese refugees under Ministerial intervention powers.

Source: DIMIA, *Population Flows Immigration Aspects 2003-04*, January 2005, Figure 2-21, 'Humanitarian Programs Outcomes 2003-04', page 32, at:  
[http://www.immi.gov.au/statistics/publications/popflows2003\\_4/index.htm](http://www.immi.gov.au/statistics/publications/popflows2003_4/index.htm),

### Where do refugees come from?

In 2003-04, a total of 13,851 people were granted visas under the Humanitarian Program, including 11,802 off-shore and 2,049 onshore applicants.<sup>15</sup>

In 2003-04, Australia granted off-shore visas to people from three main regions:

- Africa (70.6%): major source countries included Sudan, Ethiopia and Liberia.
- Middle East and South West Asia (24.4%): major source countries included Iraq, Afghanistan and Iran.
- Europe (3%): major source countries included the Federal Republic of Yugoslavia.<sup>16</sup>

**Table 3.3: off-shore Resettlement Program, visa grants by region, 1998-00 to 2003-2004**

Region	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Europe	4,736	3,424	3,462	2,709	1,158	354
Middle East and SW Asia	2,919	2,208	2,155	2,743	4,656*	2,867**
Africa	1,552	1,736	2,032	2,801	5,628	8,353
Asia	295	113	316	189	201	221
America	24	21	27	16		7
off-shore Processing Centres*					311	
Other Out of Region					15	
<b>Total</b>	<b>9,526</b>	<b>7,502</b>	<b>7,992</b>	<b>8,458</b>	<b>11,656***</b>	<b>11,802</b>

\* Includes 311 grants to mainly Afghan and Iraqis in the off-shore Processing Centres in Papua New Guinea and Nauru.

\*\* Includes 90 grants to mainly Afghan and Iraqis in the off-shore Processing Centres in Papua New Guinea and Nauru.



\*\*\* Numbers do not equal total, due to discrepancies not explained by the original document.

Source: DIMIA, Fact Sheet 60 *Australia's Refugee and Humanitarian Program* (accessed 15 February 2005).

#### 4. Who is an asylum seeker?

An asylum seeker is someone who has fled their own country and applies to the government of another country for protection as a refugee.

As a signatory to the Refugee Convention, Australia must comply with its obligations and ensure that all those who make claims for protection while in Australia have their claims assessed in accordance with the Refugee Convention.

To find out the difference between a 'refugee' and an 'asylum seeker' click here

[http://www.refugeecouncil.org.au/html/facts\\_and\\_stats/facts.html](http://www.refugeecouncil.org.au/html/facts_and_stats/facts.html)

#### How many asylum seekers are there worldwide?

During 2003, 809,000 people applied for asylum worldwide. Combined with applications still pending from previous years, the total number of asylum seekers worldwide numbered 985,500 at the end of 2003.<sup>17</sup> Many asylum seekers make refugee applications in neighbouring countries, while some apply in countries further afield. Because mainland Australia shares no land border with any other country and is far from most major conflicts, relatively few people seek asylum here compared to the United States and Europe. For example, in 2003 about 4,260 people sought asylum in Australia (this excludes persons who, since September 2001, arrived at Australia's excised migration zones or are being processed in Papua New Guinea or Nauru). This compares with 61,050 in the United Kingdom, 60,670 in the United States and 31,860 in Canada.<sup>18</sup>

In March 2004, the United Nations High Commissioner for Refugees (UNHCR) released annual statistics on asylum seekers arriving in industrialised countries.<sup>19</sup> The statistics revealed that:

- The number of asylum seekers arriving in industrialised countries fell sharply for the third year in a row in 2004.
- This is the lowest level of asylum seekers arriving in industrialised countries for 16 years.
- The number of asylum claims in industrialised countries fell by 22% in 2004, adding to a similarly steep decline in 2003.
- The number of asylum claims in Australia and New Zealand fell by 28%, compared to falls of 26% in North America and 19% in the European Union.

**Table 4.1: Asylum applications submitted in select industrialised countries, 2003**

ASYLUM APPLICATIONS SUBMITTED IN SELECTED INDUSTRIALIZED COUNTRIES <sup>1</sup> [in 2003]		
Country of Asylum	Main Countries of Origin	Asylum applications
United Kingdom	Somalia / Iraq / China / Zimbabwe / Iran / Turkey	61,100





United States <sup>2</sup>	China / Colombia / Mexico / Haiti / Indonesia	60,700
France	Turkey / China / D.R. Congo / Russian Fed. / Algeria	59,800
Germany	Turkey / Serbia and Montenegro / Iraq / Russian Fed. / China	50,600
Austria	Russian Fed. / Turkey / India / Serbia and Montenegro / Afghanistan	32,400
Canada	Pakistan / Mexico / Colombia / China / Costa Rica	31,900
Sweden	Serbia and Montenegro / Somalia / Iraq / Stateless / Bosnia and Herzegovina	31,300
Switzerland	Serbia and Montenegro / Turkey / Iraq / Algeria / Georgia	20,800
Belgium	D.R. Congo / Russian Fed. / Serbia and Montenegro / Iran / Cameroon	16,900
Norway	Serbia and Montenegro / Afghanistan / Russian Fed. / Somalia / Iraq	16,000
Netherlands	Iraq / Iran / Afghanistan / Somalia / Liberia	13,400
Czech Republic	Russian Fed. / Ukraine / Slovakia / China / Viet Nam	11,400
Slovakia	Russian Fed. / India / China / Armenia / Afghanistan	10,400

1. Countries with more than 10,000 asylum applications.

2. Estimated by UNHCR on the basis of 1.4 persons per asylum application.

**Source:** UNHCR, [Refugees by Numbers](#), 2004 Edition

### **Decreasing numbers of asylum seekers in industrialised countries in 2004**

In March 2005, the United Nations High Commissioner for Refugees (UNHCR) issued a press release stating that in 2004, the total number of asylum seekers arriving in the 38 industrialized countries for which comparable historical statistics are available, was the lowest since 1988, at 368,000.

In the press release, the Director of UNHCR's Europe Bureau, stated that given the low numbers of asylum seekers in the past year, politicians, the media and the public who advocate making the asylum system more and more restrictive, should no longer have a reason to claim that there is a huge asylum crisis. The Director also indicated that the low numbers of asylum seekers should prompt countries to focus on improving the quality of their asylum systems with a view to protecting refugees, rather than focusing on just cutting numbers. <sup>11</sup>

#### **Note:**

11. [See: Asylum claims fall to lowest level for 16 years, says UNHCR, 2 March 2005](#)



## 5. What happens to asylum seekers in Australia?

Asylum seekers in Australia are treated differently according to whether they entered Australia as 'authorised' or 'unauthorised' arrivals.<sup>20</sup>

- **'Authorised' arrivals** enter Australia with a valid visa (such as a tourist or student visa). Asylum seekers who are 'authorised' arrivals can apply for a permanent protection visa (PPV). Until their refugee application is decided, they are usually granted a 'bridging visa' which allows them to live in the community. Some have permission to work or, in exceptional circumstances, may receive financial help from the government if they cannot meet their most basic needs for food, accommodation and health care.<sup>21</sup> Authorised arrivals who are not found to be refugees according to Australian migration law may be detained until they are removed from the country.<sup>22</sup>
- **'Unauthorised' arrivals** enter Australia without a valid visa. Australia detains 'unauthorised' arrivals while their refugee applications are decided. Those found to be refugees according to Australian migration law and who pass medical and security tests are granted a temporary protection visa (TPV).<sup>23</sup> Unauthorised arrivals who are found not to be refugees under Australian migration law remain in detention until they are removed from the country.<sup>24</sup>

### How do 'unauthorised' arrivals enter Australia?

'Unauthorised' arrivals enter Australia by sea and air. In recent years, most asylum seekers have come to Australia by sea.

#### Boat arrivals

Since 1989, 13,593 people came to Australia by boat without approval of the Australian Government.<sup>25</sup>

- In 2001-02, 1,277 people arrived in Australia by boat without a visa.
- In 2003-04, 53 people arrived in Australia by boat without a visa. They were taken to Christmas Island and processed by DIMIA.<sup>26</sup>
- On 4 November 2003, 14 Turkish Kurds were detected off Melville Island approximately 70 kilometres north of Darwin. Regulations excising this and other northern islands from Australia's migration zone were introduced by the Government on the same day.<sup>27</sup> The Regulations were originally disallowed by the Senate on 24 November 2003<sup>28</sup>, but were reintroduced and passed in July 2005.<sup>29</sup>

**Table 5.1: Boat arrivals since 1989**

Year	Total arrivals
1989-90	224
1990-91	158
1991-92	78
1992-93	194
1993-94	194
1994-95	1071
1995-96	589



1996-97	365
1997-98	157
1998-99	921
1999-00	4175
2000-01	4137
2001-02	1277
2002-03	0
2003-04	53
<b>Totals</b>	<b>13 593</b>

Source: DIMIA, *Fact Sheet 74 - Unauthorised Arrivals by Air and Sea*  
<http://www.immi.gov.au/facts/74unauthorised.htm> (accessed 15 February 2005)

**Table 5.2: Visa status of people arriving by boat since 1989 (to 2003-04)**

<b>Total Unauthorised Boat Arrivals</b>	<b>13 593</b>
Removed	3788
Still in Detention	281
Granted TPV	8175
Granted PPV	1227
Granted BVE (Bridging Visa E class)	74
Other	14
Escaped	34

### Air arrivals

Non-Australian citizens are identified as arriving illegally in Australia if they arrive with no travel documents (or with improper travel documents, such as expired or cancelled visas or documents which are found to be fraudulent). If such an arrival claims to be a refugee, their application for a protection visa is assessed before any decision about whether to remove them from Australia, is made.<sup>30</sup>

- In 2001-02, 1,193 people were refused entry at Australia's airports.
- In 2002-03, 937 people were refused entry at Australia's airports
- In 2003-04, 1,241 people were refused entry at Australia's airports.<sup>31</sup>

### Who decides refugee applications?

Once in Australia, an asylum seeker applies for refugee status to Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). If DIMIA rejects the application, the asylum seeker can apply to the Refugee Review Tribunal (RRT).



When a permanent protection visa (PPV) application is made, an officer from DIMIA, acting as a delegate of the Minister, decides if the applicant engages Australia's obligations under the Refugee Convention. This is done by assessing the claim against the definition of a refugee set out in that Convention. If the application is successful, the applicant is granted the appropriate protection visa.

Where an application by a person in Australia is refused, that person can seek a merit's review of that decision from an independent tribunal - either the Refugee Review Tribunal (RRT) or the Administrative Appeals Tribunal (AAT), depending on the basis for refusal.

The RRT also examines the applicant's claim against the Refugee Convention definition. If the RRT makes a decision unfavorable to the applicant on the written evidence available, it must give the applicant the opportunity of a personal hearing.

Applicants rejected by the RRT (and who have no other legal reason to be in Australia) have 28 days to depart Australia. If they stay beyond this 28-day period, they may be removed from Australia. People who cannot be removed, because they are 'stateless' (no state considers them to be a national of their country), may be held indefinitely in immigration detention while waiting to be deported. The Government's power to indefinitely detain non-citizens under this arrangement was upheld by the High Court in the case of *Al-Kateb v Godwin*.<sup>32</sup>

The Minister has the power to intervene after an RRT or AAT decision relating to a protection visa, but is not compelled to do so. The Minister may intervene to substitute a more favourable decision to the applicant if the Minister believes it is in the public interest.<sup>33</sup>

Applicants may also seek a judicial review of an RRT or AAT decision if they wish to have that decision reviewed by the courts. A judicial review involves a court looking at the way in which the decision was made to determine whether the decision maker made any legal errors.<sup>34</sup> Judicial review of an RRT or AAT decision is available in the Federal Magistrates Court, Federal Court and the High Court. However, legislation that commenced in October 2001 significantly restricts the grounds on which decisions may be challenged in the Courts.<sup>35</sup>

## 6. Why are asylum seekers allowed to stay in Australia?

Every country that has adopted the Refugee Convention, including Australia, makes a commitment to protect the rights of refugees. The most essential part of this commitment is never to return a refugee to a country where he or she has reason to fear persecution.

Article 33 of the Refugee Convention is titled 'Prohibition of expulsion or return ('refoulement')' and says:

- 1. *No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*
- 2. *The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.*<sup>36</sup>

As a signatory to the Refugee Convention, Australia is obliged to provide protection for those people to whom it has obligations under the Convention, regardless of whether they entered Australia lawfully or unlawfully. Australian law requires that people who have not succeeded in their claim for refugee protection and who have no lawful basis to remain in Australia, be removed from



Australia as soon as practicable. Their removal takes place following the conclusion of any litigation and when arrangements have been made to return them to their country of residence.

## 7. What is the 'Pacific Solution'?

The 'Pacific Solution' or 'Pacific Strategy' aims to prevent unauthorised boat arrivals from reaching the Australian mainland and making refugee applications. The Australian Government developed this strategy in September 2001 in response to the 'Tampa' issue. It involved removing or 'excising' certain parts of Australian Territory - Ashmore and Cartier Islands, Christmas Island, Cocos (Keeling) Islands - from Australia's 'migration zone'. This means people landing in these places cannot make refugee applications without permission from the Minister for Immigration. Instead, they are transferred to a 'declared country', such as the Pacific island nation of Nauru or Manus Province in Papua New Guinea, while their applications are assessed by the United Nations High Commissioner for Refugees (UNHCR) and the Australian Government.<sup>37</sup>

### Amendments to the Migration Act 1958 (Cth) in September 2001

- 'Excised' certain territories off the Australian mainland (including Christmas Island, Ashmore and Cartier Islands, and the Cocos (Keeling) Islands) from Australia's 'migration zone'. This means that unauthorised arrivals at 'excised off-shore places' cannot apply for a visa unless the Minister for Immigration considers it to be in the public interest. Only people who arrive inside the migration zone have a right to apply for visas.
- Allowed Australian officials to take asylum seekers intercepted en route to Australia to another country for processing. Such people effectively fall outside Australia's refugee protection system and have no right of appeal in Australian tribunals or courts if their refugee claims are rejected.
- Introduced two new Temporary Protection Visas - (Visa Subclass 447) Secondary Movement Off-shore Entry (Visa Subclass 451) or Secondary Movement Re-location (discussed in section 2 above).
- Amended the definition of a refugee to require that a Convention reason must be the essential and significant reason for the feared persecution and that the persecution would involve serious harm to the person. [Click here for more information](#)
- Further limited the grounds for judicial review of refugee decisions, prohibited class actions in migration litigation and prevented legal proceedings against the Commonwealth in relation to the entry, status and detention and transfer of an off-shore entry person.
- Introduced mandatory minimum terms of imprisonment for 'people smugglers'.<sup>12</sup>

#### Note:

12. DIMIA, Fact Sheet 71 - [New Measures to Strengthen Border Control](#) (produced by DIMIA 8 August 2002, updated by DIMIA 11 March 2004).

See also:

- [DIMIA, Fact Sheet 70- Border Control](#) (updated by DIMIA 3 November 2004).
- [DIMIA, Fact Sheet 73- People Smuggling](#) (revised by DIMIA 13 June 2003, updated by DIMIA 11 March 2004)
- [DIMIA, Fact Sheet 76 off-shore Processing Arrangements](#) (revised by DIMIA 29 September 2004, updated by DIMIA 7 October 2004)
- [DIMIA, Fact Sheet 81 Australias Excised off-shore Places](#) (updated by DIMIA 6 October 2004)



## What was the 'Tampa' issue?

In August 2001, the Norwegian cargo ship MV Tampa rescued 433 mostly Afghan and Iraqi asylum seekers from a sinking boat in the Indian Ocean. The Australian Government refused permission for the Tampa to enter Australian waters and allow its passengers to get off on nearby Christmas Island, an Australian Territory. Despite the Government's warning, the Tampa did enter Australian waters and the ship was then boarded by Australian Special Air Services (SAS) troops. The passengers were transferred from the Tampa to an Australian Navy ship and taken to Nauru. The government of Nauru agreed to house the asylum seekers in return for economic aid from Australia.

The Government's refusal to allow asylum seekers on the Tampa to land on Australian territory was later challenged in Australian courts which upheld the right of the government to act as it did.

Click here to read the Full Federal Court decision at:

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/federal%5fct/2001/1329.html?query=title+%28+%22vadarli%22+%29>

## **Victorian Council for Civil Liberties v Minister for Immigration and Multicultural Affairs and Ors; Eric Vadarlis v Minister for Immigration and Multicultural Affairs and Ors ('The Tampa Case')**

The Human Rights and Equal Opportunity Commission was granted leave to intervene in these proceedings before the Federal Court, Full Federal Court and High Court (27 November 2001).

The primary issue in these proceedings was the lawfulness of the actions of the Commonwealth Government concerning the 433 asylum seekers who were rescued by the MV Tampa from their sinking boat on or about 26 August 2001. The Commonwealth Government sought to prevent the asylum seekers from entering the migration zone in Australia as they did not have valid visas to do so. To this end, the Government:

- did not permit the MV Tampa to enter the port on Christmas Island
- did not permit the asylum seekers to leave the ship except to leave Australian territorial waters
- through SAS officers, controlled the movements of the asylum seekers on the ship
- did not permit the asylum seekers to communicate with persons off the ship or persons off the ship to communicate with them.

The Commission's submissions in this case can be found on the Commission's website at:

- <http://www.humanrights.gov.au/legal/guidelines/tampa.html>

- <http://www.humanrights.gov.au/legal/guidelines/tampa2.html>

On 11 September 2001, Justice North in the Federal Court found that the Commonwealth had detained without lawful authority the asylum seekers rescued by MV Tampa. He ordered the Commonwealth to release those asylum seekers and bring them to a place on the mainland of Australia.

The Commonwealth appealed against this decision to the Full Court of the Federal Court. On 17 September 2001, by a majority comprising Justices Beaumont and French, that Court determined





that the appeals should be allowed and set aside the orders made by Justice North. The majority judges concluded that the Commonwealth was acting within its executive power under section 61 of the Constitution in the steps it took to prevent the landing of the rescuees. The majority has also concluded that the rescuees were not detained by the Commonwealth nor did they have their freedom restricted by anything that the Commonwealth did.

Chief Justice Black dissented. He took the view that whilst the power to expel people entering Australia illegally is undoubted, it is a power that derives only from laws made by the Parliament and not from powers otherwise exercisable by the Executive Government. He took the view that since the powers provided in the Migration Act were not relied upon, the Commonwealth Government had no power to detain those rescued from the Tampa. He considered that on the facts of the case there was a detention by the Commonwealth and that since it was not justified by the powers conferred by the Parliament under the Migration Act it was not justified by law. He was therefore of the opinion that the appeal should be dismissed.

On 27 November 2001, Mr Vadarlis made an application to the High Court seeking special leave to appeal against the majority decision of the Full Federal Court. He also sought to challenge the validity of parts of the Border Protection (Validation and Enforcement Powers) Act 2001 which was passed after the Full Court decision was delivered (the relevant parts of this Act purported to render all Commonwealth action relating to the Tampa lawful).

The High Court refused Mr Vadarlis' application. While the High Court found that the issues in this case raised important constitutional questions, there had been a change in the factual circumstances since the Full Court hearing (as the asylum seekers were no longer on a ship controlled by the Commonwealth but in Nauru). The Court indicated that this rendered the arguments on appeal hypothetical and made it difficult to determine what orders the Court should make if the applicants were successful.

Source: HREOC Annual Report 2001-2002, pp 88-89.

## 8. What is immigration detention?

According to Australia's migration law, 'unlawful non-citizens' must be detained until they are granted a visa (pursuant to a refugee claim or some other category) or are removed from the country. An 'unlawful non-citizen' is a person without a valid visa in Australia (not including Australian citizens). People become 'unlawful non-citizens' if:

- they enter Australia without a valid visa (ie. if they are 'unauthorised arrivals');
- they enter Australia with a valid visa but then stay past the visa's expiry date (ie. they 'overstay' their visa); or
- they break the conditions of their visa (for example, by working when the visa does not allow it).<sup>38</sup>

The law requiring immigration detention for 'unlawful non-citizens' has been in place since 1992.

### How many people are detained?

- In 2003-04, a total of 7,492 people were detained at some time during the year, compared to 7,934 people in 2002-03 and 10,897 people in 2001-02.
- In 2003-04, the maximum number of people detained on any one day was 1,263, compared to 1,409 in 2002-03 and 3,667 in 2001-02.<sup>39</sup>



## Immigration detention facilities

Immigration detention facilities in Australia consist of the following types: <sup>40</sup>

- Immigration Detention Centres (IDCs): mainly used to detain people in breach of their visa conditions or people refused entry at Australia's international airports or over-stayers. The following IDCs currently operate around Australia:
  - Villawood IDC (established in New South Wales in 1976)
  - Maribyrnong IDC (established in Victoria in 1966)
  - Perth IDC (established in 1981)
- Immigration Detention Facilities (IDFs): used to detain a range of unlawful non-citizens. e.g. Baxter Immigration Detention Facility (open since July 2002)
- Immigration Reception and Processing Centres (IRPCs): primarily used for unauthorised boat arrivals. e.g. Christmas Island Immigration Reception and Processing Centre (open since September 2001)
- Residential Housing Projects (RHPs): enable women and children to live in family style accommodation while remaining in immigration detention. The Port Augusta Residential Housing Project is such a facility.

The following detention facilities are no longer used by the Australian Government:

- Port Hedland IRPC (closed in 2004)
- Port Hedland RHP (closed in 2004)
- Curtin IRPC (closed in 2002)
- Woomera IRPC (closed in 2003, but maintained as a contingency centre)
- Woomera RHP (closed in 2003) <sup>41</sup>

**Table 8.1 Numbers\* of Persons in Immigration Detention as at 10 August 2005.**

Facility	Men	Women	Children	Total
Villawood IDC	324	43	0	367
Maribyrnong IDC	42	8	0	50
Perth IDC	14	0	0	14
Christmas Island IRPC	0	0	0	0
Baxter IDF	117	10	0	127
Port Augusta RHP		0	0	0
Total in IDFs (includes 1 in transit)				559
Other Places of Detention (as at 5 August) <sup>**32</sup>		21	41	94
Total - All Locations				653



\* Approximately 75% of detainees arrived in Australia with a visa and have been detained as the result of compliance action by the Department. The majority of these detainees are not seeking asylum.

\*\* Includes correctional facilities / watch houses/ hotels / apartments / foster care / community / hospitals / illegal foreign fishers in harbours awaiting departure, removal or court appearance.

Source: DIMIA, *Immigration Detention Facilities* at <http://www.immi.gov.au/detention/facilities.htm> (accessed 23 August 2005)

Click here for the latest available figures.

<http://www.immi.gov.au/detention/facilities.htm>

### Off-shore processing

People who arrive without authorisation at an **excised off-shore** place (such as the Cocos Islands or Christmas Island) will be detained on Christmas Island or moved to off-shore processing centres in Nauru or Manus Province in Papua New Guinea.

off-shore processing facilities were established in Nauru and Papua New Guinea in September and October 2001 respectively. These facilities were set up in cooperation with the Governments of Nauru and Papua New Guinea. Asylum seekers are not detained under Australia law, or the laws of Nauru or Papua New Guinea, but are instead granted Special Purpose Visas by those countries while they await processing and resettlement or return.<sup>42</sup>

As at August 2004, a total of 1,547 people had been processed in centres in Nauru or Manus since their inception in 2001. Of the 1,547 people, some 839 have been resettled. In 2003-04, 122 were resettled variously in Australia, New Zealand, Sweden and Canada. Of the 122 people resettled in 2003-04, 90 were assessed to be refugees, while 32 non-refugees were resettled in New Zealand and Canada under humanitarian or other programs.<sup>43</sup>

All asylum seekers in Nauru and Manus have had their refugee claims assessed by either the UNHCR or the Australian Government. In August 2004, no one remained at the Manus centre whilst 104 people remained in Nauru under existing arrangements which expire on 30 June 2005.

As at August 2004, 7% of the asylum seekers remained in Nauru, 31% had returned home, and 62 % had been resettled in Australia and other countries. Some 905 refugees have been resettled: 531 in Australia, 335 in New Zealand, 19 in Sweden, 10 in Canada, six in Denmark and four in Norway. A further 55 non-refugees have also been resettled: 44 in New Zealand, 6 in Canada, 4 in Australia and 1 in Sweden.<sup>44</sup>

### What does off-shore detention cost?

In 2003-04, the Federal Budget provided for a provisional allocation of \$106.9 million for the operation of off-shore processing centres. The total operational cost of operating the off-shore processing centres in Nauru and Manus from September 2001 to June 2004 was \$187.8 million.<sup>45</sup>

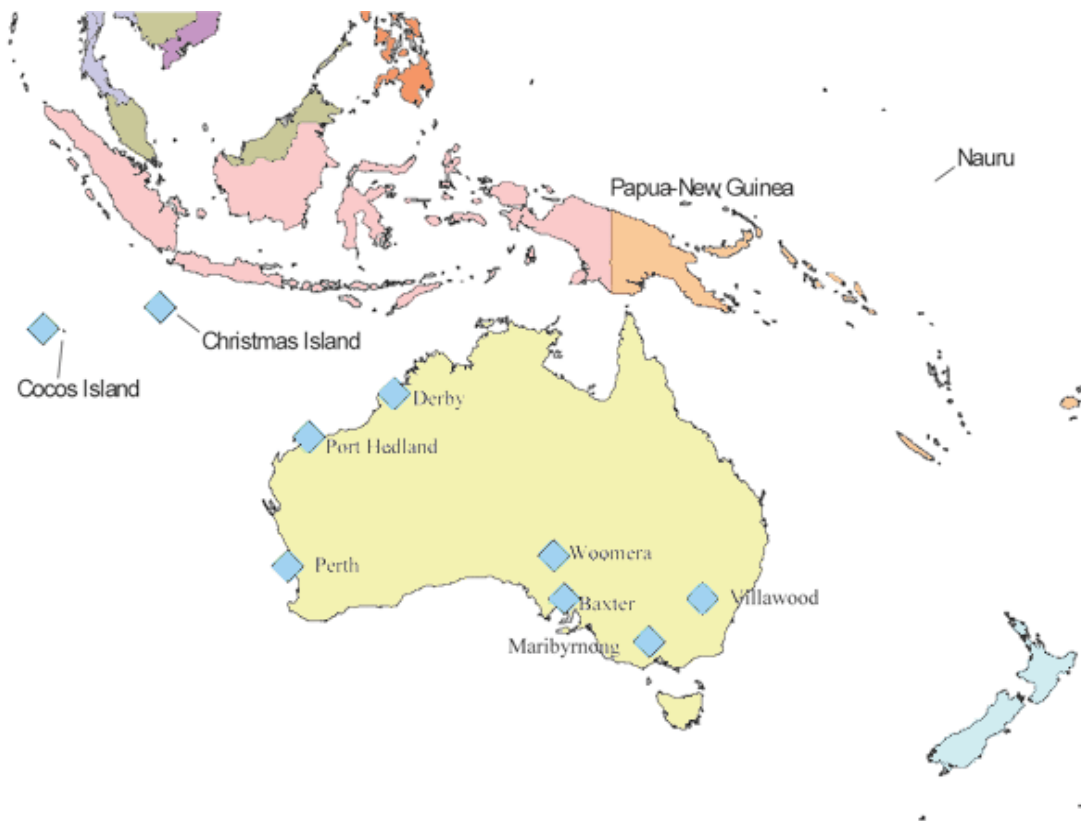
Click here for information on the costs of onshore detention

<http://www.anao.gov.au/WebSite.nsf/Publications/BF7B1AE59CA8BED0CA256EB6006F8A65>



## Where are they detained?

**Figure 8.1: Location of Australia's immigration detention centres**



\*Off-shore processing facilities in the Republic of Nauru and on Manus Island were set up with the cooperation of the Governments of Nauru and Papua New Guinea and are administered by the International Organization for Migration (IOM).

Note: Curtin was closed in 2002. Woomera was closed in 2003. Port Hedland was closed in 2004.

## Where do people in detention come from?

The main nationalities of detainees since 2000 are: Afghan, Iraqi, Iranian, Chinese, Indonesian, Sri Lankan, Palestinian, Korean, Vietnamese and Bangladeshi.<sup>46</sup>

## Children in detention

Between 1 July 1999 and 30 June 2003, 2,184 children arrived in Australia without a valid visa and sought asylum all these children were held in immigration detention while their refugee status was being determined. More than 92% of these children have been recognised by Australia to be refugees and were granted temporary protection visas.<sup>47</sup>

The highest number of children in detention at any one time between 1 January 1999 and 1 January 2004 was 842 (on 1 September 2001).<sup>48</sup>



**Table 8.2: Children in Immigration Detention**

Year	Number of Children
1999-2000	976
2000-2001	1,923
2001-2002	1,696
2002-2003	703

Source: HREOC, *A Last Resort? National Inquiry into Children in Immigration Detention*, 2004 (page 8).

### National Inquiry into Children in Immigration Detention

From November 2001 to April 2004, the Human Rights and Equal Opportunity Commission conducted a National Inquiry into Children in Immigration Detention to investigate whether Australia's detention laws complied with international law. The Inquiry examined the treatment of child asylum seekers held in immigration detention centres between 1999 and 2002 and looked at alternatives to placing children in immigration detention centres. The report of the Inquiry into Children in Immigration Detention, 'A last resort?' was tabled in Federal Parliament in May 2004.

The Inquiry found:

- Australia's immigration detention policy is inconsistent with the *Convention on the Rights of the Child*. In particular, Australia's mandatory detention system fails to ensure a child's right to be detained as a measure of last resort and for the shortest appropriate period of time.
- Children in immigration detention for long periods of time are at high risk of serious mental harm.
- Long-term detention undermines a child's ability to enjoy a variety of other important rights.

### Extract from the UN Convention on the Rights of the Child about detention.

The UN *Convention on the Rights of the Child* says in article 37:

*States Parties shall ensure that:*

*(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. **The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;***

*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and*



*shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as **the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority**, and to a prompt decision on any such action [emphasis added].*

The Inquiry recommended:

- Releasing children in immigration detention (with their parents) by 10 June 2004.
- Changing Australia's immigration detention laws so they are consistent with the Convention on the Rights of the Child. The key principles that should guide development of any new migration laws and policies are:
  - Children can only be detained as a measure of last resort and for the shortest appropriate period of time.
  - The best interests of the child must be a primary consideration.
  - Unaccompanied children must receive special assistance so they can enjoy the same rights as all other children.
  - Children have the right to family unity.
  - Children must be treated with humanity and respect for their inherent dignity.
  - Children enjoy, as much as possible, the right to development and recovery from past torture and trauma.
  - Asylum seeking children must receive appropriate assistance to enjoy their rights including the right to be protected under the Convention relating to the Status of Refugees.
- Appointing an independent guardian so unaccompanied children can receive appropriate support.
- Setting out in law minimum standards of treatment for children in immigration detention.

Click here for a summary guide to the National Inquiry into Children in Immigration Detention

[http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/summaryguide/index.html](http://www.humanrights.gov.au/human_rights/children_detention_report/summaryguide/index.html)

Click here for the report of the National Inquiry into Children in Immigration Detention

[http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/index.htm](http://www.humanrights.gov.au/human_rights/children_detention_report/report/index.htm)

Click here for the Australian Government's press release in response to the report on the National Inquiry into Children in Immigration Detention

[http://www.minister.immi.gov.au/media\\_releases/media04/v04068.htm](http://www.minister.immi.gov.au/media_releases/media04/v04068.htm)

### **Recent developments in children and families in detention**

Since the tabling of A last resort?, the Migration Act was amended by the Migration Amendment (Detention Arrangements) Act 2005 (Cth). Those amendments:

- affirm the principle that children shall only be detained as a last resort. That principle is not directly enforceable;
- confer upon the Minister a new power (which is non-compellable and non-reviewable) to grant a visa to a person in immigration detention where the Minister is satisfied that it is in the public interest to do so;





- confer upon the Minister the power to specify alternative arrangements for a person in immigration detention, which will enable the Minister to allow families with children to reside in the community in a specified place. Again this power is non-compellable and non-reviewable; and
- confer upon the Commonwealth Ombudsman the function of reviewing the cases of people who have been in immigration detention for more than two years. While the ombudsman is further empowered to make recommendations regarding such people (including as to the appropriateness of their ongoing detention) such recommendations will not be binding upon the Minister.

From 29 July 2005, there have been no children held in Immigration Detention Centres.<sup>49</sup> The 42 children who were being held prior to that date have been transferred into alternative, community detention, using the discretionary powers granted by the above amendment. The continued application of community detention to child asylum seekers and their families remains at the discretion of the Minister.

### **The Palmer Report**

In July 2005, an Inquiry was held to determine how an Australian resident, Cornelia Rau, came to be held for 10 months in Immigration Detention, and an Australian citizen, Vivian Alvarez, came to be deported to the Philippines. The report highlighted problems concerning the provision of mental health services to detainees, as well as identifying serious cultural and structural problems within the department of immigration.

Click here to access the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report at

[http://www.minister.immi.gov.au/media\\_releases/media05/palmer-report.pdf](http://www.minister.immi.gov.au/media_releases/media05/palmer-report.pdf)

## **9. How does Australia help refugees settle?**

Providing early settlement and social support to refugees and humanitarian entrants who arrive in Australia is crucial to helping them rebuild their lives in Australia.<sup>50</sup>

Click here for information about the kinds of assistance available to refugees and humanitarian entrants.

<http://www.immi.gov.au/facts/66ihss.htm#2>

Not all refugees have access to the same support and benefits to help them settle in Australia.

- Off-shore humanitarian program entrants and on-shore permanent protection visa holders can access special support services designed specifically for refugees as well as many general services and benefits provided to migrants and Australian residents.<sup>51</sup>
- Refugees granted temporary protection visas cannot access the same range of services provided to other refugees and humanitarian entrants.



**Table 9.1: Benefits and services for Permanent and Temporary Protection Visa holders**

	<b>Permanent Protection Visa (PPV)</b>	<b>Temporary Protection Visa (TPV)</b>
<b>Social security</b>	Immediate access to the full range of social security benefits.	Ineligible for New Start, Youth Allowance, Sickness Allowance, Parenting Payment, Austudy and a range of other benefits. May access Special Benefit, which is means tested and reviewed every 13 weeks. Formal activity testing has been proposed. Eligible for Family Tax Benefit, Child Care Benefit, Maternity Allowance, Maternity Immunisation Allowance and Double Orphan Pension. Can access Medicare.
<b>Education</b>	Same access to education as any other permanent resident.	Access to school education subject to state policy. Effective preclusion from tertiary education due to imposition of full fees. As temporary residents, TPV holders are not eligible for HECS. <i>Note:</i> TPV holders 18 or over who are engaged in full time education (including vocational courses) cannot receive Special Benefit.
<b>Settlement support</b>	Access to full range of DIMIA settlement support services including the Integrated Humanitarian Settlement Strategy (IHSS). Receive 13 weeks initial accommodation and bond assistance. Eligible for rent assistance.	Not eligible for most DIMIA funded services such as Migrant Resource Centres and ethno-specific community welfare agencies. Can use Early Health Assessment and Intervention Programs. Limited access (12 sessions) to torture and trauma counselling. Eligible for rent assistance. No initial accommodation offered or bond assistance.
<b>Family reunion</b>	Able to apply to bring members of immediate family (spouse and children) to Australia.	Not eligible for family reunion (including reunion with spouse and children) except at the discretion of the Minister for Immigration.
<b>Work rights</b>	Permission to work and receive employment assistance.	Permission to work but ability to find employment influenced by temporary nature of visa and poor English skills.
<b>Language training</b>	Access to 510 hours of English language training through the Adult Migrant English Program (AMEP) or the Advanced English for Migrants Program (AEMP). Eligible for Translating and Interpreting Service (TIS).	Not eligible for the federally funded English language programs AMEP and AEMP. Not eligible for TIS. TPV minors are eligible for English as a Second Language New Arrivals Program in schools.



<b>Travel</b>	Will be able to leave the country and return without jeopardising their visa. No automatic right of return.
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**Table 9.2: Eligibility for Services and Entitlements of Humanitarian Entrants and TPV Holders**

IHSS Services	Refugees	SHP Entrants	PPV Holders	TPV Holders
Initial Information and Orientation Assistance	yes	no	no	no
Accommodation Support	yes	no	no	no
Household Formation Support	yes	yes	no	no
Early Health Assessment and Intervention (EHAI)	yes	yes	*yes	*yes
Proposer Support	no	yes	no	no
Community Support for Refugees	yes	yes	no	no
<b>Longer-term Settlement Services</b>				
Migrant Resource Centres/Migrant Service Agencies/ Community Settlement Services Scheme	yes	yes	yes	no
Adult Migrant English Program	yes	yes	yes	no
ESL-NA for minors	yes	yes	yes	yes
<b>Immigration</b>				
Commonwealth funded airfare	yes	no	NA	NA
Family reunion	yes	yes	yes	no
Right of Re-entry	yes	yes	yes	no
Permanent residence	yes	yes	yes	no
<b>Employment</b>				
Work rights	yes	yes	yes	yes
Job Network: Job matching **	yes	yes	yes	yes
Rent Assistance **	yes	yes	yes	yes
<b>Health</b>				
Medicare **	yes	yes	yes	yes
Health Care Card **	yes	yes	yes	yes
Maternity Allowance **	yes	yes	yes	yes
Program of Assistance for the Survivors of Torture and Trauma (PASTT)	yes	yes	yes	yes



<b>Education</b>				
Public Education (school-aged)	yes	yes	yes	yes
HECS ***	yes	yes	yes	yes
New Apprenticeship **	yes	yes	yes	yes
<b>Social Benefits</b>				
Newstart Allowance **	yes	yes	yes	no
Rent Assistance **	yes	yes	yes	yes
Family Tax Benefit **	yes	yes	yes	yes

**Note:** Entrants may also be eligible for other social benefits. Further information on entitlements can be obtained from [www.centrelink.gov.au](http://www.centrelink.gov.au)

\* Only PV holders released from Immigration Detention are eligible for EHAI.

\*\* If assessed as otherwise eligible.

\*\*\* Special conditions apply, see [www.hecs.gov.au](http://www.hecs.gov.au)

Source: [Australia's Support for Humanitarian Entrants 2003-04 DIMIA](#)

## Further Reading

### General

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## Notes

<sup>1</sup> See *Refugees Convention*: Article 1 A (2) at: [http://www.unhcr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhcr.ch/html/menu3/b/o_c_ref.htm)

Note: People not covered by the Refugee Convention include those for whom there are serious reasons for considering that they have committed war crimes, crimes against humanity (such as genocide or torture) or a serious non-political crime (*Refugees Convention*: Article 1F).

<sup>2</sup> UNHCR, *Refugees by Numbers*, 2004 Edition, September 2004, page 6, at: [www.unhcr.ch/cgi-bin/texis/vtx/basics/opendoc.pdf?tbl=BASICS&id=416e3eb24%20](http://www.unhcr.ch/cgi-bin/texis/vtx/basics/opendoc.pdf?tbl=BASICS&id=416e3eb24%20). Note: The figures for the global refugee population does not include some four million Palestinian refugees who fall under the responsibility of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), see UNHCR, *2003 Global Refugee Trends: Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum-Seekers and Other Persons of Concern to UNHCR*, June 2004, page 2, at: <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=40d015fb4>

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<sup>8</sup> DIMIA, *Fact Sheet 60 - Australia's Refugee and Humanitarian Program* (updated by DIMIA 1 February 2005)

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<sup>9</sup> DIMIA, *Fact Sheet 60 - Australia's Refugee and Humanitarian Program* (updated by DIMIA 1 February 2005)

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<sup>10</sup> DIMIA, *Fact Sheet 65-New Humanitarian Visa System* (revised by DIMIA 19 July 2002, updated by DIMIA 11 March 2004) <http://www.immi.gov.au/facts/65humanitarian.htm> (accessed 15 February 2005).



<sup>11</sup> DIMIA, *Fact Sheet 61 – Seeking Asylum within Australia* (revised by DIMIA 12 November 2003, updated by DIMIA 11 March 2004) <http://www.immi.gov.au/facts/61asylum.htm> (accessed 15 February 2005).

<sup>12</sup> DIMIA, *Fact Sheet 61 – Seeking Asylum within Australia* (revised by DIMIA 12 November 2003, updated by DIMIA 11 March 2004) <http://www.immi.gov.au/facts/61asylum.htm> (accessed 15 February 2005).

<sup>13</sup> From October 1999 to February 2003, 8,616, TPV's were granted, see: Question on Notice, *'Immigration: Asylum Seekers'* (Question No. 1448), Hansard, House of Representatives, 14 May 2003, page 14537, at: <http://www.aph.gov.au/hansard/reps/dailys/dr140503.pdf> In 2003-04, 185 TPV's were granted, see: DIMIA, *Population Flows Immigration Aspects 2003-04*, January 2005, Figure 2-21, "Humanitarian Programs Outcomes 2003-04", page 32, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/index.htm](http://www.immi.gov.au/statistics/publications/popflows2003_4/index.htm)  
See also: DIMIA, *Fact Sheet 65-New Humanitarian Visa System* (revised by DIMIA 19 July 2002, updated by DIMIA 11 March 2004) <http://www.immi.gov.au/facts/65humanitarian.htm> (accessed 15 February 2005).

<sup>14</sup> DIMIA, *Fact Sheet 60 - Australia's Refugee and Humanitarian Program* (updated by DIMIA 1 February 2005) <http://www.immi.gov.au/facts/60refugee.htm> (accessed 15 February 2005).

<sup>15</sup> DIMIA, *Population Flows Immigration Aspects 2003-04*, January 2005, Figure 2-21, "Humanitarian Programs Outcomes 2003-04", page 32, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/index.htm](http://www.immi.gov.au/statistics/publications/popflows2003_4/index.htm)

<sup>16</sup> For source regions (percentage figures) see: DIMIA 2003-04 Annual Report, *Refugee and Humanitarian Entry and Stay*, page 68, at: [http://www.immi.gov.au/annual\\_report/annrep04/index.htm](http://www.immi.gov.au/annual_report/annrep04/index.htm)  
See also: DIMIA, *Population Flows: Immigration Aspects 2003-04*, January 2005, page 33, at: [http://www.immi.gov.au/statistics/publications/popflows2003\\_4/index.htm](http://www.immi.gov.au/statistics/publications/popflows2003_4/index.htm). For major source countries in those regions, see DIMIA, *Fact Sheet 60 - Australia's Refugee and Humanitarian Program* (Table: *Visa Grants by Top Ten Countries of Birth*) (updated by DIMIA 1 February 2005) <http://www.immi.gov.au/facts/60refugee.htm> (accessed 15 February 2005).

<sup>17</sup> UNHCR, *Refugees by Numbers*, 2004 Edition, September 2004, page 10, at: [www.unhcr.ch/cgi-bin/taxis/vtx/basics/opendoc.pdf?tbl=BASICS&id=416e3eb24%20](http://www.unhcr.ch/cgi-bin/taxis/vtx/basics/opendoc.pdf?tbl=BASICS&id=416e3eb24%20)

<sup>18</sup> UNHCR, *Asylum Levels and Trends: Europe and non-European Industrialized Countries, 2003: A comparative overview of asylum applications submitted in 44 European and 6 non-European countries in 2003 and before*, 24 February 2004, Table 1, page 7, at: <http://www.unhcr.ch/cgi-bin/taxis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=403b1d7e4>

<sup>19</sup> UNHCR: *2004 Asylum Statistics for Industrialised Countries*, 1 March 2005, at: <http://www.unhcr.ch/cgi-bin/taxis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=422454fb4>  
See also: UNHCR: *Asylum claims fall to lowest level since 1988*, 1 March 2005, at: <http://www.unhcr.ch/cgi-bin/taxis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=4224411d4>

<sup>20</sup> DIMIA, *Fact Sheet 61 – Seeking Asylum within Australia* (revised by DIMIA 12 November 2003, updated by DIMIA 11 March 2004) <http://www.immi.gov.au/facts/61asylum.htm> (accessed 15 February 2005).



- <sup>21</sup> DIMIA, *Fact Sheet 61 – Seeking Asylum within Australia* (revised by DIMIA 12 November 2003, updated by DIMIA 11 March 2004) <http://www.immi.gov.au/facts/61asylum.htm> (accessed 15 February 2005). Note: Financial assistance for basic food, accommodation and healthcare needs is provided through the Asylum Seeker Assistance scheme, administered by DIMIA through contractual arrangements with the Australian Red Cross.
- <sup>22</sup> DIMIA, *Fact Sheet 74 -Unauthorised Arrivals by Air and Sea* (revised by DIMIA 6 October 2004, updated by DIMIA 8 October 2004) Now unavailable.
- <sup>23</sup> DIMIA, *Fact Sheet 61 – Seeking Asylum Within Australia* (revised by DIMIA 12 November 2003, updated by DIMIA 11 March 2004) <http://www.immi.gov.au/facts/61asylum.htm> (accessed 15 February 2005).
- <sup>24</sup> DIMIA, *Fact Sheet 74 -Unauthorised Arrivals by Air and Sea* (revised by DIMIA 6 October 2004, updated by DIMIA 8 October 2004) Now unavailable.
- <sup>25</sup> DIMIA, *Fact Sheet 74 -Unauthorised Arrivals by Air and Sea* (revised by DIMIA 6 October 2004, updated by DIMIA 8 October 2004) Now unavailable.
- <sup>26</sup> DIMIA, *Fact Sheet 74 -Unauthorised Arrivals by Air and Sea* (revised by DIMIA 6 October 2004, updated by DIMIA 8 October 2004) Now unavailable.
- <sup>27</sup> Phillips J and Millbank A, *Protecting Australia's Borders*, Research Note No. 22, 2003-04, Parliamentary Library, Parliament of Australia, at: <http://www.aph.gov.au/library/pubs/rn/2003-04/04rn22.htm>  
See also: Migration Amendment Regulations 2003 (No. 8), at:[http://www.austlii.edu.au/cgi-bin/download.cgi/download/au/legis/cth/num\\_reg/mar200382003n283361.rtf](http://www.austlii.edu.au/cgi-bin/download.cgi/download/au/legis/cth/num_reg/mar200382003n283361.rtf)
- <sup>28</sup> See: *Disallowance Alert 2003*, Senate, Parliament of Australia, at: [http://www.aph.gov.au/senate/committee/regord\\_ctte/alert2003.htm#Individual\\_Senators](http://www.aph.gov.au/senate/committee/regord_ctte/alert2003.htm#Individual_Senators) [Note: Any legislative instrument such as a Regulation, ceases to have effect if either House of Parliament passes a resolution disallowing that legislative instrument].
- <sup>29</sup> MIGRATION AMENDMENT REGULATIONS 2005 (NO. 6) (SLI NO 171 OF 2005)
- <sup>30</sup> DIMIA, *Seeking Asylum within Australia* (Updated by DIMIA 27 August 2004) [http://www.immi.gov.au/refugee/seeking\\_asylum.htm](http://www.immi.gov.au/refugee/seeking_asylum.htm) (accessed 16 February 2005).  
See also: DIMIA, *Fact Sheet 74 -Unauthorised Arrivals by Air and Sea* (revised by DIMIA 6 October 2004, updated by DIMIA 8 October 2004) Now unavailable.
- <sup>31</sup> DIMIA, *Fact Sheet 74 -Unauthorised Arrivals by Air and Sea* (revised by DIMIA 6 October 2004, updated by DIMIA 8 October 2004) Now unavailable.
- <sup>32</sup> See *Al Kateb v Godwin* (2004) 78 ALJR 1099
- <sup>33</sup> DIMIA, *Fact Sheet 61 – Seeking Asylum within Australia* (revised by DIMIA 12 November 2003, updated by DIMIA 11 March 2004) <http://www.immi.gov.au/facts/61asylum.htm> (accessed 15 February 2005).
- <sup>34</sup> DIMIA, *Fact Sheet 9 - Litigation involving Migration Decisions* (revised by DIMIA 25 January 2005, updated by DIMIA 1 February 2005) <http://www.immi.gov.au/facts/09litigation.htm> (accessed 14 March 2005).





<sup>35</sup> DIMIA, *Fact Sheet 75 – Processing Unlawful Boat Arrivals* (produced by DIMIA 7 May 2004, updated by DIMIA 14 May 2004) <http://www.immi.gov.au/facts/75processing.htm> (accessed 16 February 2005).

<sup>36</sup> See *Convention Relating to the Status of Refugees* at: [http://www.unhcr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhcr.ch/html/menu3/b/o_c_ref.htm)

<sup>37</sup> 'Excised off-shore places' also include Australian sea installations and Australian resource installations. See DIMIA, *Fact Sheet 71 - New Measures to Strengthen Border Control* (updated by DIMIA March 2004) <http://www.immi.gov.au/facts/71border.htm> (accessed 16 February 2005). See also: DIMIA, *Fact Sheet 81 – Australia's Excised Offshore Places* (revised by DIMIA 30 September 2004, updated by DIMIA 30 October 2004) <http://www.immi.gov.au/facts/81excised.htm> (accessed 15 February 2005).

<sup>38</sup> DIMIA, *Fact Sheet 82- Immigration Detention* (revised by DIMIA 14 October 2004, updated by DIMIA 14 January 2005) <http://www.immi.gov.au/facts/82detention.htm> (accessed 15 February 2005). Note: while the immigration detention policy and legislation applies equally to people who overstay their visas and those whose visas have been cancelled, most of the people detained have been unauthorised arrivals, mostly asylum seekers. Also see section 189 of Australia's *Migration Act 1958*.

<sup>39</sup> DIMIA, 2003-04 Annual Report, *Detention*, page 92, at: [http://www.immi.gov.au/annual\\_report/annrep04/index.htm](http://www.immi.gov.au/annual_report/annrep04/index.htm)

<sup>40</sup> DIMIA, *Immigration Detention Facilities* (updated by DIMIA 11 February 2005) <http://www.immi.gov.au/detention/facilities.htm> (accessed 16 February 2005).

<sup>41</sup> DIMIA, *Detention Facilities No Longer Operational* (updated by DIMIA 4 February 2005) [http://www.immi.gov.au/detention/facilities\\_not\\_operational.htm](http://www.immi.gov.au/detention/facilities_not_operational.htm) (accessed 17 February 2005).

<sup>42</sup> For details on the offshore processing centres on Nauru and Manus Island, see DIMIA, *Fact Sheet 76 – Offshore Processing Arrangements* (revised by DIMIA 29 September 2004, updated by DIMIA 7 October 2004) <http://www.immi.gov.au/facts/76offshore.htm> (accessed 16 February 2005).

<sup>43</sup> DIMIA, 2003-04 Annual Report, *Detention*, page 98, at: [http://www.immi.gov.au/annual\\_report/annrep04/index.htm](http://www.immi.gov.au/annual_report/annrep04/index.htm)

<sup>44</sup> DIMIA, *Fact Sheet 76 - Offshore Processing Arrangements* (revised by DIMIA 29 September 2004, updated by DIMIA 7 October 2004) <http://www.immi.gov.au/facts/76offshore.htm> (accessed 16 February 2005).

<sup>45</sup> DIMIA, 2003-04 Annual Report, *Detention*, page 112, at: [http://www.immi.gov.au/annual\\_report/annrep04/index.htm](http://www.immi.gov.au/annual_report/annrep04/index.htm)

<sup>46</sup> DIMIA, *Fact Sheet - 82 Immigration Detention*, (revised by DIMIA 14 October 2004, updated by DIMIA 14 January 2005) <http://www.immi.gov.au/facts/82detention.htm> (accessed 15 February 2005).

<sup>47</sup> HREOC, *A Last Resort? National Inquiry into Children in Immigration Detention*, 2004, page 15, at: [http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/index.htm](http://www.humanrights.gov.au/human_rights/children_detention_report/report/index.htm)

<sup>48</sup> HREOC, *A Last Resort? National Inquiry into Children in Immigration Detention*, 2004, page 9, at: [http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/index.htm](http://www.humanrights.gov.au/human_rights/children_detention_report/report/index.htm)



<sup>49</sup> DIMIA Detention statistics are available at:  
<http://www.immi.gov.au/detention/facilities.htm>

<sup>50</sup> United Nations High Commissioner for Refugees, Chapter 2.3, 'Promoting Integration through Early Settlement and Social Support' in Refugee Resettlement: An International Handbook to Guide Reception and Integration, 30 September 2002, at: <http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3d985f464>

<sup>51</sup> Unlike new migrants who must generally wait two years before they can access certain benefits, off-shore Humanitarian Program entrants and on-shore Permanent Protection Visa holders can receive social security payments through Centrelink, health benefits through Medicare and a range of other government assistance programs.

