



Australian  
Human Rights  
Commission

# Face the Facts

SOME QUESTIONS AND ANSWERS ABOUT  
INDIGENOUS PEOPLES, MIGRANTS AND  
REFUGEES AND ASYLUM SEEKERS • 2012



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**Design and layout** Lisa Thompson, JAG Designs

# Foreword



Myths are often propagated about some groups of people who live in Australia. These groups include Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse peoples, asylum seekers and refugees.

So, back in 1997, the Commission decided to address these myths with a concise publication which would set out basic facts and figures. That publication is *Face the Facts* and I am very pleased to say this is its fifth edition.

*Face the Facts* draws on primary research information from a variety of sources, including laws made by the Australian Parliament, government policies, academic research and statistics gathered by the Australian Bureau of Statistics including Census data.

*Face the Facts* is one of the Australian Human Rights Commission's most successful publications and continues to be its most requested.

This edition will be available exclusively online. There are a number of advantages to being online. Firstly, we have found that the vast majority of people access the Commission's resources online, rather than in hard copy. Secondly, publishing online makes it very easy for us to be able to update the information and therefore keep it current.

While the structure and the format of this 2012 online edition is consistent with previous editions, in order to ensure that *Face the Facts* remains user friendly and accessible, its contents have been considerably updated.

We have also significantly enhanced the publication to make sure that more relevant topics and more recent issues have been covered. This includes information about the *Declaration on the Rights of Indigenous Peoples*, Australia's new multicultural policy and research into racism and racial attitudes in Australia.

If you want to look more closely at a particular issue, we have included a list of recommended publications and websites. You can also visit the Commission's website to find out more information about groups and issues included in *Face the Facts*.

I hope that you find this edition of *Face the Facts* to be a useful resource that sheds light on the multifaceted realities of Australia today and one that will help encourage enlightened debate and thinking based on facts.

A handwritten signature in black ink, which appears to read 'Helen Szoke'.

**Dr Helen Szoke**  
Race Discrimination Commissioner  
Australian Human Rights Commission

August 2012

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## Chapter 1:

# Questions and answers about Aboriginal and Torres Strait Islander peoples

## 1.1 Who are Aboriginal and Torres Strait Islander peoples?

Aboriginal and Torres Strait Islander peoples are the first peoples of Australia.<sup>1</sup> They hold a unique place in Australian history and continue to make an essential contribution to our ongoing national development and identity.

Over time, the following definition has been agreed within the community and Australian Government to identify when someone is an Aboriginal and/or Torres Strait Islander person. The person:

- is of Aboriginal and/or Torres Strait Islander descent
- identifies as an Aboriginal and/or Torres Strait Islander person, and
- is accepted as an Aboriginal and/or Torres Strait Islander person by the community in which he or she lives.<sup>2</sup>

Aboriginal and Torres Strait Islander peoples retain their cultural identity whether they live in urban, regional or remote areas of Australia. There is a great diversity of cultures, languages, kinship structures and ways of life among Aboriginal and Torres Strait Islander peoples across Australia.

Aboriginal peoples and Torres Strait Islander peoples have distinct cultures. Aboriginal peoples are comprised of many different language and/or tribal groups, while Torres Strait Islanders are from the Torres Strait Islands region. Some Torres Strait Islander peoples have moved to mainland Australia either through forced removal or for employment and education.

## 1.2 How many Aboriginal and Torres Strait Islander people are there?<sup>3</sup>

It is estimated that Aboriginal and Torres Strait Islander people represent 2.5% of the Australian resident population. At the 2006 Census, this was estimated to be 517 174 people of whom:

- 90% identified as Aboriginal peoples
- 6% identified as Torres Strait Islander peoples
- 4% identified as both Aboriginal and Torres Strait Islander peoples.<sup>4</sup>

Torres Strait Islanders accounted for 6.4% of the Indigenous population and 0.1% of the total Australian population.<sup>5</sup>

### Age

Young people make up a large proportion of all Aboriginal and Torres Strait Islander peoples. In 2006, 37.6% of the Aboriginal and Torres Strait Islander population was aged 14 years or less, compared to 19.1% of the non-Indigenous population.<sup>6</sup>

In 2006 the median age of Aboriginal and Torres Strait Islander peoples was 21 years, compared with 37 years for non-Indigenous Australians.<sup>7</sup>

## 1.3 Where do Aboriginal and Torres Strait Islander peoples live?

Almost one third (32%) of Aboriginal and Torres Strait Islander people live in major cities such as Sydney, Brisbane and Melbourne.<sup>8</sup>

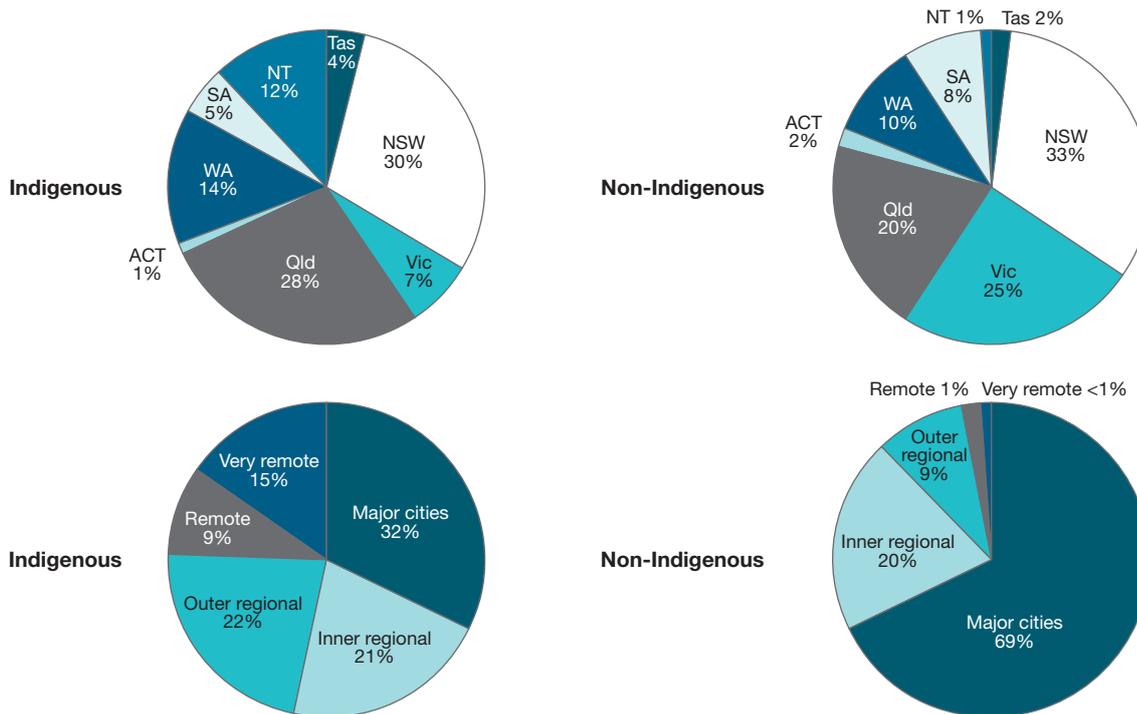
The majority of Torres Strait Islanders live in Queensland, including the Torres Strait Islands (64%)<sup>9</sup>, with 15% living in New South Wales and 6% in Victoria.<sup>10</sup>

### Remoteness

Remoteness reflects the distance people have to travel to obtain services.<sup>11</sup> Of the 68% of Aboriginal and Torres Strait Islander peoples who live outside major cities, 43% live in regional areas, 9% in remote areas, and 15% in very remote areas (like Tenant Creek or discrete Aboriginal communities).<sup>12</sup>

By comparison, the majority of non-Indigenous people live in major cities (69%) and less than 2% in remote and very remote Australia.<sup>13</sup>

Figure 1.1: Proportion of the Australian population, by State and Territory, 2006<sup>14</sup>



## 1.4 How widely are Aboriginal and Torres Strait Islander peoples' languages spoken in Australia?

Prior to the colonisation of Australia, it is estimated there were 250 distinct Aboriginal and Torres Strait Islander people's languages (incorporating 600 dialects). According to the *National Indigenous Languages Survey Report 2005*, most of the original languages are no longer spoken. Today only 18 Aboriginal and Torres Strait Islander languages are spoken by all generations of people within a given language group, and even these languages are endangered.<sup>15</sup>

In 2008, nationally, 11% of Aboriginal and Torres Strait Islander peoples aged 15 years and over spoke an Aboriginal or Torres Strait Islander language as their main language at home. In remote areas this figure rose to 42%.<sup>16</sup>

Among Aboriginal and Torres Strait Islander children aged 4–14 years, and living in remote areas, 63% spoke, or spoke some words, of an Aboriginal or Torres Strait Islander language, while 35% of children aged 4–14 years in urban areas spoke, or spoke some words, of an Aboriginal or Torres Strait Islander language.<sup>17</sup>

Among Torres Strait Islander peoples, 56% spoke, or spoke some words of, an Indigenous language compared with 39% of Aboriginal people.<sup>18</sup>

Read more about Aboriginal languages, Aboriginal English and Creoles (which combine English and Aboriginal and Torres Strait Islander languages) here.

A national approach to Indigenous languages

A strong connection with language and culture can benefit Aboriginal and Torres Strait Islander peoples in other parts of their life, including their social, emotional and health wellbeing.<sup>19</sup>

In 2009, the Australian Government launched *Indigenous Languages – A National Approach 2009* which endeavours to preserve Aboriginal and Torres Strait Islander peoples' languages by increasing information about these languages in Australian life and supporting language programs in schools.

There are concerns that this National Approach might not be enough to stop the decline in usage of Aboriginal and Torres Strait Islander languages, as governments are not obliged to comply with or implement it. This is highlighted in the Northern Territory where current education policy prevents schools from following bilingual education models by enforcing compulsory teaching in English for the first four hours of schooling each day.<sup>20</sup>

## 1.5 Do Aboriginal and Torres Strait Islander peoples experience disadvantage?

Aboriginal and Torres Strait Islander peoples experience poorer outcomes across all measures of quality of life, such as health, education, employment and housing. They are also over-represented in the criminal justice system and the care and protection systems, compared to non-Indigenous people.

### Health

#### (a) Life expectancy

In 2005–2007, the average life expectancy of Aboriginal and Torres Strait Islander peoples was approximately 10–11 years less than for non-Indigenous Australians.<sup>21</sup> For men, life expectancy is estimated to be 67.2 years (compared to 78.7 for non-Indigenous men) and for women 72.9 years (compared to 82.6 for non-Indigenous women).<sup>22</sup>

#### (b) Mortality rates

In some states,<sup>23</sup> mortality rates for Aboriginal and Torres Strait Islander peoples remain at twice the rates for non-Indigenous people. This is despite a national 27% decline in mortality rates for Aboriginal and Torres Strait Islander peoples between 1991 and 2009.<sup>24</sup> To close the gap in the mortality rate of the two groups it is vital that both relative *and* absolute gains are made by Aboriginal and Torres Strait Islander peoples. Relative gains are important because non-Indigenous people in Australia also made significant health gains in this time period, and these work to keep the gap widening.

Among Aboriginal and Torres Strait Islander children, between 1997–99 and 2007–09,

- the mortality rate for infants (less than 1 year old) improved but continues to be 1.6 to 3 times the rate for non-Indigenous infants
- mortality rates for children aged 1–4 years remained constant but also continue to be 1.8 to 3.8 times the rate for non-Indigenous children.<sup>25</sup>

#### (c) Causes of death

In 2009, the four major causes of death for Aboriginal and Torres Strait Islander peoples were:

- cancer (19.3% of total deaths)
- heart disease (15.3% of total deaths)
- external causes (13%)
- diabetes (8% of total deaths).<sup>26</sup>

The number of deaths due to diabetes was significantly lower among non-Indigenous people (2.9%).<sup>27</sup>

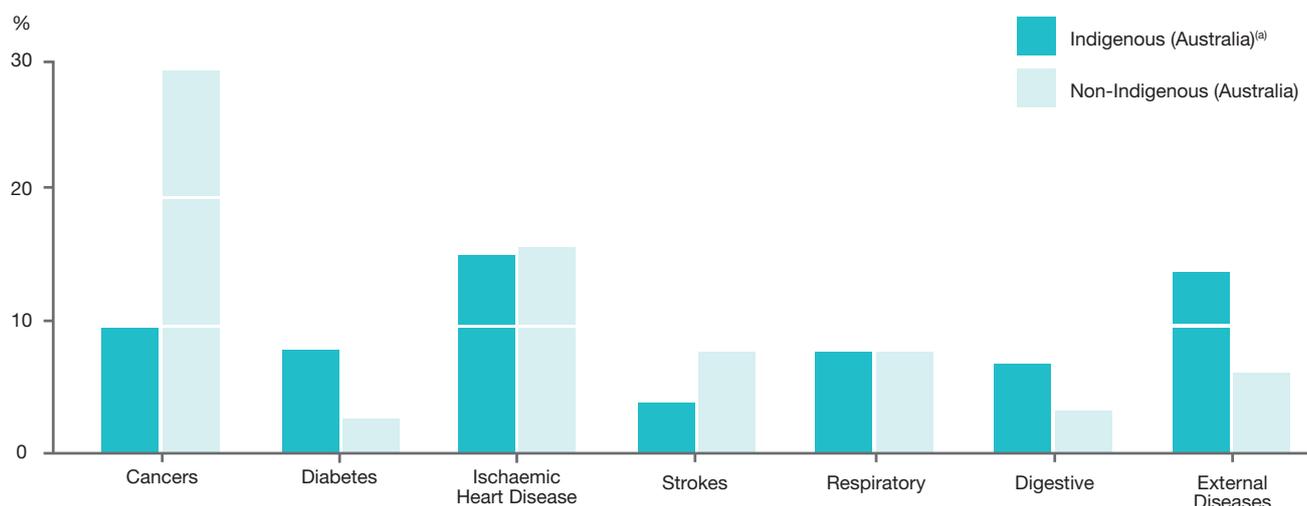
In 2009, intentional self-harm and land transport accidents were the two leading external causes of death for Aboriginal and Torres Strait Islander peoples.<sup>28</sup>

#### (d) Preventable deaths

Many deaths are considered avoidable or preventable because they are attributable to 'lifestyle' factors (e.g. smoking or alcohol consumption); or to conditions that can be effectively treated if detected early enough, including through primary health care.

In 2010, Aboriginal and Torres Strait Islander peoples died from preventable causes at four times the rate of non-Indigenous Australians, a significant contributor to the health and life expectancy gap between the two groups. The most common conditions or events causing avoidable mortality were ischaemic heart disease, some cancers (particular lung cancer), diabetes and suicide. In terms of the number of potentially avoidable deaths, the greatest opportunities to reduce mortality for Aboriginal and Torres Strait Islander peoples relate to primary health care and preventative health activities (e.g. anti-smoking drives).<sup>29</sup>

**Figure 1.2: Selected underlying causes of death as proportion of total deaths, by Indigenous status 2009<sup>(b)(c)30</sup>**



- (a) Includes deaths of persons identified as Aboriginal, Torres Strait Islander or both Aboriginal and Torres Strait Islander.
- (b) See Explanatory Notes 73-84 for further information on specific issues relating to 2009 data.
- (c) Causes of death data for 2009 are preliminary and subject to a revisions process. See Technical Note: Causes of Death Revisions and Explanatory Notes 28-32.

### (e) Long term health conditions and disability

Overall, half of all Aboriginal and Torres Strait Islander peoples aged over 15 have a disability or long term health condition.<sup>31</sup>

In comparison to non-Indigenous Australians Aboriginal and Torres Strait Islander adults continue to experience:

- ten times the rate of kidney disease<sup>32</sup>
- three times the rate of diabetes, asthma and heart disease<sup>33</sup>
- 1.6 times the rate of circulatory problems<sup>34</sup>
- twice the rates of profound or severe core activity restrictions.<sup>35</sup>

Aboriginal and Torres Strait Islander peoples in non-remote areas are also 50% more likely to have a physical disability, and three times as likely to have an intellectual disability, than non-Indigenous Australians.<sup>36</sup>

### (f) Mental health

In 2008, approximately one third of Aboriginal and Torres Strait Islander peoples reported experiencing high or very high levels of psychological distress. People with a disability or long-term health condition, victims of violence and those who experienced discrimination were more likely to suffer from psychological distress.<sup>37</sup>

Recent studies show that despite having poor quality of life indicators, 72% of Aboriginal and Torres Strait Islander peoples aged 15 years and over-reported being a happy person all or most of the time.<sup>38</sup> Those in remote areas reported greater levels of happiness (78%) than people in more urbanised areas (71%).<sup>39</sup>

### (g) Children

Aboriginal and Torres Strait Islander children (0–4 years old) are hospitalised for respiratory diseases at almost twice the rate of non-Indigenous children.<sup>40</sup>

In 2008, an estimated 7% of Aboriginal and Torres Strait Islander children (0–14 years) experienced eye or sight problems and 9% had ear or hearing problems.<sup>41</sup>

### Find out more

The *Overcoming Indigenous Disadvantage: Key Indicators 2011* report highlights the current state of Aboriginal and Torres Strait Islander peoples' disadvantage and the priority areas which need to be addressed.

It also records progress being made to 'close the gap' between Indigenous and non-Indigenous Australians.

Factors contributing to adverse health outcomes

### (a) Racism

A growing body of evidence suggests that discrimination and racism are linked to a range of adverse health conditions among Aboriginal and Torres Strait Islander peoples, such as smoking, substance use, psychological distress and poor self-assessed health status.<sup>42</sup>

Aboriginal and Torres Strait Islander peoples continue to experience high levels of racism. In 2008, 27% of Aboriginal and Torres Strait Islander peoples over the age of 15 reported experiencing discrimination in the preceding 12 months; in particular by the general public, in law and justice settings and in employment.<sup>43</sup>

### Find out more

Challenging Racism: The Anti-Racism Research Project

Australian Reconciliation Barometer 2010  
Reconciliation Australia

### (b) Access to health facilities

Aboriginal and Torres Strait Islander peoples have less access to health services and facilities than non-Indigenous Australians. This may be due to a scarcity of accessible and culturally appropriate services, marginalisation and experiences of discrimination.<sup>44</sup> These issues can affect Aboriginal and Torres Strait Islander peoples living in both urban and regional settings.

Aboriginal and Torres Strait Islander peoples living in remote areas have significantly less access to health clinics, pharmacies and hospitals compared to other Aboriginal and Torres Strait Islander peoples.<sup>45</sup>

### Further reading

A statistical overview of Aboriginal and Torres Strait Islander peoples in Australia; Australian Human Rights Commission (2008)

The health and welfare of Australia's Aboriginal and Torres Strait Islander people: an overview 2011; Australian Institute of Health and Welfare (2011)

2010 Senate Community Affairs References Committee *The Hidden Toll: Suicide in Australia* Report of the Inquiry into suicide in Australia

*Social Justice Report 2010*; Australian Human Rights Commission (2011)

*Social Justice Report 2005*; Australian Human Rights Commission (2005)

### Education

Over recent years, more Aboriginal and Torres Strait Islander students are staying at school through to the completion of Year 12. Retention rates for Aboriginal and Torres Strait Islander students from Year 7 through to Year 12 increased from 35% in 1999 to 45% in 2009.<sup>46</sup>

The proportion of Aboriginal and Torres Strait Islander students who received a Year 12 certificate also increased from 18% in 2001 to 22% in 2008.<sup>47</sup> Those who lived in cities were more likely to have completed Year 12 than those living in remote areas (29% and 16% respectively).<sup>48</sup>

Non-school qualification rates among Aboriginal and Torres Strait Islander peoples have also improved in recent years. In 2008, 40% of Aboriginal and Torres Strait Islander peoples nationally aged 25–64 years attained a non-school qualification, up from 32% in 2002.<sup>49</sup> In major cities, 50% of Aboriginal and Torres Strait Islander peoples aged 25–64 years held a non-school qualification, compared with 41% in regional areas and 26% in remote areas.<sup>50</sup>

However, in 2008, approximately 40% of Aboriginal and Torres Strait Islander peoples aged 18–24 were neither employed nor studying, compared to 10% of non-Indigenous people.<sup>51</sup>

### Employment and income

In 2010, nationally, 46% of Aboriginal and Torres Strait Islander peoples aged 15 years and over were employed and 18% were unemployed.<sup>52</sup>

Of those participating in the labour force, 62% lived in major cities,<sup>53</sup> with men participating at significantly higher rates than women – 62% compared to 50%.<sup>54</sup>

### (a) Community Development Employment Projects (CDEP)

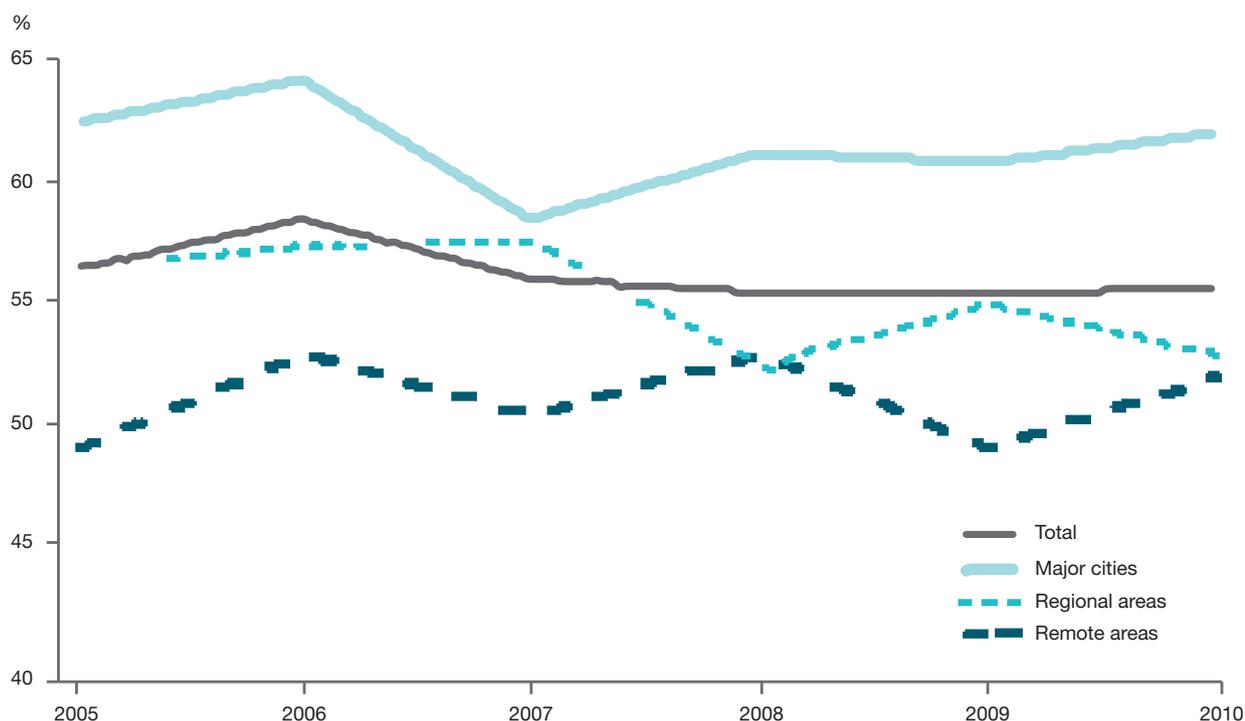
The CDEP program is an Australian Government funded initiative for unemployed Aboriginal and Torres Strait Islander peoples. It funds Aboriginal and Torres Strait Islander peoples' community organisations to pay participants working on community projects and generates opportunities for jobs and training.<sup>55</sup> Program participants are classified as 'employed' and the income from this work replaces income support payments and unemployment benefits.

Since July 2009, the CDEP program has been discontinued in non-remote communities where the economy is well established (see Figure 1.3).<sup>56</sup>

### (b) Income

Almost half (49%) of Aboriginal and Torres Strait Islander households earn an income in the bottom quarter of the national average.<sup>58</sup> In 2006, the average weekly household income for Aboriginal and Torres Strait Islander peoples (\$460) was only 62% that of non-Indigenous people (\$740).<sup>59</sup>

Figure 1.3: Participation rate, Indigenous persons aged 15 years and over – 2005 to 2010<sup>57</sup>



## Housing

In 2008:

- the majority (69%) of Aboriginal and Torres Strait Islander adults lived in rental accommodation
- 29% owned their homes (20% with a mortgage and 8.5% without).<sup>60</sup>

In comparison, 72% of non-Indigenous households own their homes and 26% rent.<sup>61</sup>

Nationally, 27.5% of Aboriginal and Torres Strait Islander peoples lived in overcrowded conditions. In remote areas, this figure increased to 48%.<sup>62</sup>

In 2008, there were major structural problems with 26% of Aboriginal and Torres Strait Islander peoples' homes across Australia.<sup>63</sup>

Aboriginal and Torres Strait Islander peoples are over-represented in homelessness assistance programs. For example, in 2005–2006, they made up 17% of those who accessed the Supported Accommodation Assistance Program,<sup>64</sup> a joint Commonwealth and State funded program for people who are homeless, escaping family violence, or at risk of homelessness.

## Access to justice

### (a) Adult imprisonment

Aboriginal and Torres Strait Islander peoples comprised 26% of the full time adult prison population in Australia in 2010.<sup>65</sup> The national imprisonment rate for Aboriginal and Torres Strait Islander adults is 14 times higher than for non-Indigenous adults.<sup>66</sup>

Western Australia has the highest number of Aboriginal and Torres Strait Islander peoples in prison per capita, at 3328.7 per 100 000 in 2009.<sup>67</sup>

Aboriginal and Torres Strait Islander people are disproportionately represented at the less serious end of the scale in convicted offences. In 2010:

- the majority of Aboriginal and Torres Strait Islander peoples were imprisoned for 'acts intended to cause injury' (32.9%). Comparatively, 15% of non-Indigenous prisoners were incarcerated for this type of offence.<sup>68</sup>
- Aboriginal and Torres Strait Islander prisoners also had higher proportions of unlawful entry offences (14.8% of Aboriginal and Torres Strait Islander prisoners, compared to 10.2% of non-Indigenous prisoners).<sup>69</sup>

By comparison, non-Indigenous prisoners were more likely to be convicted of:

- homicide (10.7% of non-Indigenous prisoner offences, compared to 6.1% of Aboriginal and Torres Strait Islander prisoners)
- sexual assault (13.2% of non-Indigenous prisoner offences, compared to 10.4% of Aboriginal and Torres Strait Islander prisoners)
- illicit drug offences (13.1% of non-Indigenous prisoner offences, compared to 1.7% of Aboriginal and Torres Strait Islander prisoners).<sup>70</sup>

### (b) Incarceration of Aboriginal and Torres Strait Islander women

In 2009, 8% of Aboriginal and Torres Strait Islander prisoners were women. Although there are fewer Aboriginal and Torres Strait Islander women in custody than men, they are the fastest growing prison population and are severely over-represented.<sup>71</sup>

While incarceration rates for women generally have increased more rapidly than men over the past decade, the increase in imprisonment of Aboriginal and Torres Strait Islander women has been much greater over the period compared to the increase in rates of non-Indigenous female prisoners.<sup>72</sup> The imprisonment rate of Aboriginal and Torres Strait Islander women increased by 34% between 2002 and 2006, while the imprisonment rate for Aboriginal and Torres Strait Islander men increased by 22%.<sup>73</sup>

### (c) Juvenile detention

In 2008, an estimated 54% of young people in juvenile detention were from an Aboriginal and/or Torres Strait Islander background.<sup>74</sup> Aboriginal and Torres Strait Islander young people are 23 times more likely to end up in juvenile detention than their non-Indigenous counterparts.<sup>75</sup>

Aboriginal and Torres Strait Islander juveniles (aged between 10 and 17 years) and young adults (aged between 18 and 24 years) are more likely to be incarcerated today than at any other time since the release of the *Royal Commission into Aboriginal Deaths in Custody* final report (RCIADIC) in 1991.<sup>76</sup>

The final report of the Royal Commission identified poor relations with police, alcohol and substance abuse, deficient education, unemployment, inadequate housing and entrenched poverty, as factors contributing to the disproportionate number of Aboriginal and Torres Strait Islander peoples in detention.

Twenty years later, these same factors have been identified as leading to the continued (and increased) over-representation of Aboriginal and Torres Strait Islander juveniles and young adults in the criminal justice system.<sup>77</sup>

#### **(d) Deaths in custody**

Of the 86 people who died in custody in 2008 (54 in prison and 32 in police custody), 13 were Aboriginal and Torres Strait Islander peoples (15%).<sup>78</sup>

The Australian Institute of Criminology prepares these figures using the definition in the text box opposite – derived from the recommendations of RCIADIC – to determine whether a case can be deemed a death in custody.<sup>79</sup>

Although the Australian Institute of Criminology has found that Aboriginal and Torres Strait Islander peoples are no more likely to die in custody than non-Indigenous people,<sup>80</sup> their over-representation in the criminal justice system has led to Aboriginal and Torres Strait Islander peoples making up a significant number of deaths in custody.

Factors contributing to over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system

As noted above, the *Royal Commission into Aboriginal Deaths in Custody 1991 Final Report* acknowledged that the long history of inequality and disadvantage in areas such as health, housing, education, employment and income were closely linked to the disproportionate number of Aboriginal and Torres Strait Islander peoples in custody.<sup>81</sup>

The 1997 *Bringing them home* report found that the trauma experienced by Aboriginal and Torres Strait Islander children who were removed from their parents resulted in reduced levels of education which lowered employment and income opportunities.<sup>82</sup> Research also shows that Aboriginal and Torres Strait Islander peoples who were removed from their parents as part of the *Stolen Generations* are at significantly higher risk of arrest.<sup>83</sup>

## Defining Deaths in Custody

### **Death in prison custody**

Deaths in prison custody include those deaths that occur in prison or juvenile detention facilities. This also includes the deaths that occur during transfer to or from prison or juvenile detention centres, or in medical facilities following transfer from adult and juvenile detention centres (RCIADIC 1991: 189–190).

### **Death in police custody**

Deaths in police custody are divided into two main categories:

#### **Category 1**

- 1a. Deaths in institutional settings (e.g. police stations or lock-ups, police vehicles, hospitals, during transfer to or from such institutions, or following transfer from an institution).
- 1b. Other deaths in police operations where officers were in close contact with the deceased. This includes most deaths linked to police raids and shootings by police. However, it would not include most sieges where a perimeter was established around a premise but officers did not have such close contact with the person to be able to significantly influence or control the person's behaviour.

#### **Category 2**

Other deaths during custody-related police operations. This includes most sieges and cases where officers were attempting to detain a person, for example, during a pursuit. This would cover situations where officers did not have such close contact with the person to be able to significantly influence or control the person's behaviour.

### (a) Family violence

It can be difficult to estimate the incidence of violence against women in Aboriginal and Torres Strait Islander communities due to under-reporting. However the *Overcoming Indigenous Disadvantage: Key Indicators 2009* report indicated:

- Aboriginal and Torres Strait Islander women were 35 times more likely than non-Indigenous women to be hospitalised due to family-violence related assaults<sup>84</sup>
- Aboriginal and Torres Strait Islander women experienced family violence at a rate of 45 per 1000 population, compared to 3.3 per 1000 population for non-Indigenous women.<sup>85</sup>

## Further reading

Social Justice Report 2007; Australian Human Rights Commission (2008)

Social Justice Report 2011; Australian Human Rights Commission (2011)

Ending Family Violence in Aboriginal and Torres Strait Islander Communities; Australian Human Rights Commission (2006)

Breaking the Silence: Creating the Future. Addressing child sexual assault in Aboriginal communities in NSW; Aboriginal Child Sexual Assault Taskforce (2006)

Ampe Akelyernemane Meke Makarle: The Little Children are Sacred Report; Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007)

### (b) Children in out-of-home care

Aboriginal and Torres Strait Islander children are over-represented in the Australian out-of-home care system. In 2009–10, approximately 32% of all children in out-of-home care were identified as Aboriginal or Torres Strait Islander, representing a 9% increase from 10 512 children in 2008–09 to 11 468 children in 2009–10.<sup>86</sup> Aboriginal and Torres Strait Islander children were almost ten (9.7) times more likely than other children to be placed in care.<sup>87</sup>

In 2009–10, 70.5% of Aboriginal and Torres Strait Islander children in out-of-home care were placed according to the **Aboriginal and Torres Strait Islander Child Placement Principle**, which has been endorsed in legislation or policy in all Australian states and territories. The Principle states that it is preferable for a child to be placed with:

1. their extended family
2. the child's Indigenous community
3. other Indigenous people.<sup>88</sup>

A shortage of Aboriginal and Torres Strait Islander carers means that states and territories often fail to place children in accordance with the Principle. Research indicates that the recruitment of appropriate Aboriginal and Torres Strait Islander carers is restricted by the disproportionately high number of Aboriginal and Torres Strait Islander children compared to adults; and the reluctance of some Aboriginal and Torres Strait Islanders to be associated with the 'welfare' system.<sup>89</sup>

## 1.6 Do Aboriginal and Torres Strait Islander peoples get special treatment from the government?

Generally, Aboriginal and Torres Strait Islander peoples receive the same level of public benefits as non-Indigenous people. Individuals **do not** receive additional public benefits because they are from an Aboriginal or Torres Strait Islander background.

Specific government programs – not additional income – have been introduced for Aboriginal and Torres Strait Islander peoples because they are the most economically and socially disadvantaged group in Australia.

Examples include:

- Community Development Employment Projects, in remote Aboriginal communities
- Aboriginal Medical Services and Aboriginal Legal Services
- Indigenous Employment Program
- Aboriginal and Torres Strait Islander peoples' education programs, such as the Indigenous Tutorial Assistance Scheme.

These programs supplement and provide a culturally appropriate alternative to those available to the non-Indigenous Australian community. They are also necessary because Aboriginal and Torres Strait Islander peoples can face significant barriers to using mainstream services, including discrimination.

Specific medical and legal services are also available for other groups of people in Australia, such as low-income and migrant communities.

## 1.7 Overcoming Aboriginal and Torres Strait Islander peoples' disadvantage

### Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner

The Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner is a statutory position that is appointed by the federal Attorney-General. The Aboriginal and Torres Strait Islander Social Justice Commissioner is a member of the Australian Human Rights Commission.

This role was established in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody and also has specific functions under the *Native Title Act 1993* (Cth).

Read more about the position of Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda [here](#).

Every year, the Aboriginal and Torres Strait Islander Social Justice Commissioner produces:

- a **Social Justice Report** which communicates key human rights issues facing Aboriginal and Torres Strait Islander peoples, as well as recommendations related to changes in government policies and programs to improve the exercise and enjoyment of the rights of Aboriginal and Torres Strait Islander peoples
- a **Native Title Report**, which communicates key human rights issues related to native title, lands, territories and resources, as well as ways in which a practical and positive dialogue between Aboriginal and Torres Strait Islander peoples and non-Indigenous groups (using the land) can be enhanced.

Both reports are tabled in Parliament.

## Close the Gap

The Close the Gap Campaign calls on Australian governments to commit to:

- achieving equality of health status and life expectation between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians within 25 years
- achieving equality of access to primary health care and health infrastructure within ten years for Aboriginal and Torres Strait Islander peoples.

The Campaign, established in 2006, is run by a coalition of over 40 national health and human rights peak bodies and experts under the leadership of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

## Read more about

The [Close the Gap Campaign](#) and the [National Indigenous Health Equality Targets](#).

## National representative bodies

Article 18 of the *United Nations Declaration on the Rights of Indigenous Peoples* states:

Indigenous peoples have the right to participate in decision-making in matters that affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.

A national representative body is a key mechanism to enable this contribution, through partnerships with government, the private sector and the Australian community.

Over the past 50 years there have been four main national Aboriginal and Torres Strait Islander peoples' representative bodies in Australia:

- the National Consultative Committee (established in 1973)
- the National Aboriginal Conference (1977–1984)
- the Aboriginal and Torres Strait Islander Commission (1989–2005)<sup>90</sup>
- the National Congress of Australia's First Peoples.

### (a) The National Congress of Australia's First Peoples

The National Congress of Australia's First Peoples (National Congress) was established in May 2010. The National Congress has an Executive Board of eight directors, led by male and female co-chairs.

In April 2011, Jody Broun and Les Malezer became the first elected co-chairs of the Congress. The Board is supported by an Ethics Council, which provides independent expert advice.

### Read more about

The structure and goals of the National Congress.

## 1.8 What is the 'Northern Territory Emergency Response'?

The 'Northern Territory Emergency Response' (NTER), also known as the 'Northern Territory Intervention', was announced by former Prime Minister John Howard on 21 June 2007<sup>91</sup> in response to the Northern Territory Board of Inquiry report, *Ampe Akelyernemane Meke Makarle: The Little Children are Sacred Report*.

Intervention measures in the *Northern Territory National Emergency Response* legislation<sup>92</sup> included:

- suspending the operation of the *Racial Discrimination Act 1975* (Cth) (RDA) in relation to the provisions of the NTER and exempting the operation of the Northern Territory's anti-discrimination laws
- applying income management to welfare payment recipients in the 73 prescribed areas
- banning the possession, transportation, sale and consumption of alcohol in prescribed areas
- the expansion of drug and alcohol rehabilitation services
- bans on the possession of pornographic materials which have been refused classification or identified as 'restricted material' and auditing of publicly funded computers
- increased police presence and expansion of night patrol services in prescribed communities

- compulsory health checks for all Aboriginal and Torres Strait Islander children
- compulsorily acquiring five-year leases over prescribed areas
- removing the permit system for common public areas, road corridors and airstrips for prescribed communities on Aboriginal and Torres Strait Islander peoples' land
- improved quality of the physical community through intensive clean up, including rubbish removal and painting and repair of infrastructure and housing
- the appointment of managers of all government business in prescribed communities.<sup>93</sup>

The measures raised a number of concerns regarding the rights and well-being of Aboriginal and Torres Strait Islander peoples in the region, particularly the suspension of the RDA and the compulsory acquisition of land and compulsory income management in 73 prescribed communities. These actions were undertaken in contradiction of the first recommendation of *The Little Children are Sacred Report* that states: "[i]t is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities."<sup>94</sup>

### Find out more

For further analysis of the 2007 measures see *The Northern Territory 'Emergency Response' intervention – A human rights analysis*; Australian Human Rights Commission (2007)

The Northern Territory Emergency Response was reviewed in 2008 by the NTER Review Board and recommendations were made to change some of the original measures. The Australian Government and Northern Territory Government Response to the Report of the NTER Review Board was released in May 2009.

In August 2009 the Australian Government consulted with Aboriginal communities on ways that a limited number of NTER measures could be redesigned.<sup>95</sup> Chapter 3 of the *Native Title Report 2010* considers the consultation process for the redesigned measures and the measures relating to land.

The core measures of the NTER were retained, while other measures were redesigned. A key outcome of this process was legislation, the *Social Security and other legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth), passed on 21 June 2010, which reinstated<sup>96</sup> the Racial Discrimination Act in the Northern Territory with respect to the operation of the NTER.

Measures which were redesigned as part of the 2010 amendments included:

- income management schemes applying to all people receiving income support in the Northern Territory, not just prescribed areas
- customised alcohol restrictions for some communities, based on alcohol management plans administered by the Department of Families, Housing, Community Services and Indigenous Affairs
- individual communities can request to have the restriction on prohibited pornographic and very violent material lifted, at the discretion of the Minister
- a land owner subject to a five-year lease may request the Commonwealth to enter into good faith negotiations on the terms and conditions of a voluntary lease over the land
- greater transparency in the licensing procedures for community stores.<sup>97</sup>

The NTER budgetary measures end in June 2012 while the NTER legislative measures are due to end in August 2012.

In mid-2011 the Australian Government conducted a six week consultation across the Northern Territory to discuss future approaches beyond the NTER.<sup>98</sup>

On 23 November 2011, the Stronger Futures in the Northern Territory package of legislative measures were introduced into the Australian parliament. This package includes three Bills:

- the Stronger Futures in the Northern Territory Bill 2011, which contains measures aimed at reducing alcohol harm, improving food security in remote communities, and economic development in town camps and community living areas
- the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, which proposes the repeal of the *Northern Territory National Emergency Response Act 2007*

and amends several Commonwealth laws relating to existing measures, including the pornography restrictions and the prohibitions on considering customary law in bail and sentencing decisions

- Elements of the Social Security Legislation Amendment Bill 2011, which applies beyond the Northern Territory, will also have an impact on Aboriginal communities in the Northern Territory. The Bill extends income management legislation to allow referrals by recognised State or Territory authorities to trigger income management. This Bill also extends the School Enrolment and Attendance Measure (SEAM) to all Remote Service Delivery communities to Alice Springs, Tennant Creek, and remaining schools in Katherine, Alyangula and Nhulunbuy.

The Commission's submission to the Senate Community Affairs Legislation Committee *Stronger Futures in the Northern Territory Bill 2011 and two related Bills*, examines these measures.

While the NTER has delivered some benefits, such as more resources for policing and infrastructure, these were basic support services readily available to the rest of Australia. The *Northern Territory Emergency Response Evaluation Report 2011*, released in November 2011, has found that despite some improvement, health, education, employment, housing and safety outcomes remain well below those for non-Indigenous people, and that it is difficult to attribute outcomes to individual measures.<sup>99</sup>

## Find out more

*Stronger Futures in the Northern Territory* for the discussion paper and information on the mid 2011 consultations.

*Northern Territory Emergency Response Evaluation Report 2011*

*Stronger futures in the Northern Territory: Policy Statement*; Australian Government (2011)

Australian Human Rights Commission submission to the Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related Bills*

## 1.9 Does the Australian Constitution recognise Aboriginal and Torres Strait Islander peoples?

The Australian Constitution does not currently recognise Aboriginal and Torres Strait Islander peoples and it contains provisions that permit and anticipate racial discrimination (section 51(xxvi), and section 25).

In recent years, there has been growing community discussion and support for updating the Constitution to reflect the reality of modern Australia and the offending Constitutional provisions.

In December 2010, the Australian Government appointed an Expert Panel to consult with the Australian community about options to recognise Aboriginal and Torres Strait Islander peoples in the Constitution. The Panel delivered its report *Recognising Aboriginal and Torres Strait Islander peoples in the Constitution* to the Prime Minister on 19 January 2012.

### Find out more

You Me Unity: the website of the Expert Panel

Social Justice Report 2010; Australian Human Rights Commission (2011)

## 1.10 What is the Declaration on the Rights of Indigenous Peoples?

In September 2007 the United Nations General Assembly adopted the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration). The Australian Government officially endorsed the Declaration on 3 April 2009.

The Declaration does not contain any new rights, but sets out how existing human rights standards apply to the situation of indigenous peoples.

It affirms the **right to free, prior or informed consent**. This means that when making policies, laws or undertaking activities that affect indigenous peoples, governments and other parties (for example, corporations) should negotiate with indigenous peoples with the aim of obtaining their consent. This should result in processes where governments and corporations and indigenous peoples can work together equally to arrive at solutions and agreements that all parties can accept.

### Find out more

Community Guide to the Declaration on the Rights of Indigenous Peoples; Australian Human Rights Commission (2010)

## 1.11 What is the right to self-determination?

Self-determination is the right of all peoples of the world to “freely determine their political status and freely pursue their economic, social and cultural development” (article 1 of the *International Convention on Civil and Political Rights*).<sup>100</sup>

Self-determination is a collective right – belonging to ‘peoples’ – rather than an individual right.

The right to self-determination for indigenous peoples is a foundation of the *United Nations Declaration on the Rights of Indigenous Peoples*. In practice, it means that:

- a government will recognise indigenous peoples’ distinct cultures and forms of social organisation, governance and decision-making
- responsibility and power for decision-making is transferred to indigenous communities so they can make decisions about the issues that affect them.

It is also understood that this right must be exercised consistently with international law. The Declaration does not allow or encourage any action that might damage the territorial integrity or political unity of countries (article 46).

## 1.12 What is reconciliation?

Reconciliation is a process of improving, renewing or transforming relations between Aboriginal and Torres Strait Islander peoples and non-Indigenous people for the future.

It is based on:

- understanding the historical relationship between Aboriginal and Torres Strait Islander peoples and non-Indigenous people
- understanding the past injustices and impacts of colonisation and dispossession on Aboriginal and Torres Strait Islander peoples, and
- respecting the cultures, identities and rights of Aboriginal and Torres Strait Islander peoples.

In 1991, the Council for Aboriginal Reconciliation was established for a ten-year period to promote reconciliation between Aboriginal and Torres Strait Islander peoples and the wider Australian community. The Council was established by law, with 25 members appointed by the Australian Government.

In 2000, the Council provided the Australian people and government with a **Roadmap for Reconciliation**.

In December 2000, **Reconciliation Australia**, an independent not-for-profit organisation, was established to carry forward the reconciliation agenda.

It works closely with the **Close the Gap** initiative and holds regular events to promote reconciliation.

## 1.13 Who are the Stolen Generations?

The Stolen Generations refers to the generations of Aboriginal and Torres Strait Islander children forcibly removed from their families by compulsion, duress or undue influence, as a result of protectionist and child welfare laws, practices and policies in place in Australia for most of the 1900s.

The purpose of the removals was to ‘merge’, absorb’, or ‘assimilate’ Aboriginal and Torres Strait Islander peoples into the non-Indigenous population to attain a similar manner of living.

The history of the Stolen Generations varies depending on time and place. Non-Indigenous children could also be removed without their parents’ consent, but only by a court finding that a child was uncontrollable, neglected or abused (see Table 1.1).

Where were the children placed?

Aboriginal and Torres Strait Islander children were forcibly removed from their families and communities to the care of non-Indigenous people with the aim of assimilating them into non-Indigenous society. In Queensland, this often meant separating the children into dormitories on reserves or missions. In New South Wales and Western Australia, many children were trained in Aboriginal and Torres Strait Islander-only institutions to become domestic servants or farm labourers. Other children were transferred to orphanages and children’s homes with non-Indigenous children. In other cases, and especially after the 1940s, Aboriginal and Torres Strait Islander children were fostered or adopted into non-Indigenous families.<sup>102</sup>

How many children were removed?

The full scale of removals is still not known because many records have been lost. In its 1997 *Bringing them home* report, the Commission estimated that between one-tenth and one-third of all Aboriginal and Torres Strait Islander children were removed from their homes during the years in which forcible removal laws operated.<sup>103</sup> Subsequent research by Professor Robert Manne estimated the number of Aboriginal and Torres Strait Islander children removed from their families in the period 1910–70 was closer to the figure of one in ten, or between 20 000 and 25 000 individuals.<sup>104</sup>

What were the consequences of the removals?

Many members of the Stolen Generation have reported that they:

- were forbidden to speak in their own languages
- were told their parents did not want them
- experienced neglect, as well as physical, emotional and sexual abuse
- received little or no education
- were refused contact with their families.<sup>105</sup>

Separating Aboriginal and Torres Strait Islander children from their parents and communities has been demonstrated to have serious long-term impacts on their safety, well-being, mental health, cultural identity and development.

In many cases, the forced removal of members of the Stolen Generations from their families and communities has prevented them from acquiring language, culture and the ability to carry out traditional responsibilities.

It has also made it difficult for these individuals to establish their genealogical links.

Most forcibly removed children were denied the experience of being parented or at least cared for by a person to whom they were attached; for many, this was the most significant of all the major consequences of the removal policies.<sup>106</sup> Forcible removal also had long term impacts on the physical and mental health of people removed, and long term problems with substance abuse and imprisonment.<sup>107</sup> In 2008, of those who had experienced removal from their natural family, 35% assessed their health as fair or poor and 39% experienced high or very high levels of psychological distress, compared with 21% and 30% of those not removed.<sup>108</sup>

The *Bringing them home* report details the intergenerational consequences and effects of removal.

Many members of the Stolen Generations still have not been reunited with their families. The legacy of forcible removal remains in the lives of Aboriginal and Torres Strait Islander individuals and communities today and contributes to their continued disadvantage.

The *Bringing them home* report recommended that reparations be made in response to the gross violations of human rights that occurred as a result of the forcible removals. In addition to acknowledgement and an **Apology**, the Report recommended that reparations should include guarantees against repetition, restitution, rehabilitation and monetary compensation.

## Compensation

To date, a national tribunal has not been established to financially compensate members of the Stolen Generations and their families.

An alternative approach was announced by the Australian Government in 2009,<sup>109</sup> with the establishment of the Aboriginal and Torres Strait Islander Healing Foundation, a national, Indigenous-controlled, not-for-profit organisation that supports community-based healing initiatives to address the traumatic legacy of colonisation, forced removals and other past government policies. The Australian Government allocated \$26.6 million to the Foundation over four years to assist in its establishment.<sup>110</sup>

In 2006, the Tasmanian Government passed legislation that established a \$5 million fund to provide payments to eligible members of the Stolen Generations who

were removed from their families as children by the state government. The statute also enabled children of deceased members of the Stolen Generations to apply for a payment. The Scheme concluded in February 2008, with 84 members of the Stolen Generations assessed as eligible to receive \$58 333 and 22 descendants to receive either \$4000 or \$5000.

## Find out more

Visit [www.dpac.tas.gov.au/divisions/cdd/oa/stolen\\_generations](http://www.dpac.tas.gov.au/divisions/cdd/oa/stolen_generations) to read more about the Tasmanian scheme.

For the Aboriginal and Torres Strait Islander Healing Foundation visit [www.healingfoundation.org.au](http://www.healingfoundation.org.au)

One compensation claim has been successful in the Australian courts. In 2009, the South Australian Supreme Court awarded \$525,000 in damages to Bruce Trevorrow when it found that his removal at age 13 months was unlawful.

To reach this finding, the Court relied on evidence that in 1949 and 1954 the government's own legal advice showed that it did not have the authority to remove Aboriginal children unless there was proof that the child was neglected. There was no neglect in Mr Trevorrow's case, who had been fostered out to a non-Indigenous family after his natural parents had sent him to hospital for a stomach ailment at the age of 13 months. Despite frequent pleas from his natural mother, the government refused to reunite Mr Trevorrow with his family until the law changed and his parents regained legal guardianship when Mr Trevorrow was ten years old and already suffering from a range of emotional and physical problems. He was only able to live with his family for 14 months, and went on to spend the remainder of his childhood life in and out of government institutions.<sup>111</sup>

## Read more about

The Trevorrow case.

Table 1.1: State and territory laws authorising forcible removal of Aboriginal and Torres Strait Islander children<sup>101</sup>

Where	When	Legislation	Why
<b>New South Wales and the Australian Capital Territory</b>	1915 –1940	<i>Aborigines Protection Act 1909</i> (NSW) Summary table of relevant NSW legislation Summary table of relevant ACT legislation	If the Protection Board believed it was in the interest of the moral or physical welfare of the child.
<b>Northern Territory</b>	1911 – 1964	<i>Aboriginals Ordinance 1911</i> (Cth) Summary table of relevant NT laws	Being ‘Aboriginal or half-caste’ if the Chief Protector believed it was necessary or desirable.
<b>Queensland</b>	1897 – 1965	<i>Aboriginal Protection and Restriction of the Sale of Opium Act 1897</i> Summary table of relevant Queensland legislation	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.
<b>South Australia</b>	1923 – 1962	<i>Aborigines Act 1911</i> <i>South Australian Aborigines Act, 1934–1939</i> Summary of SA legislation	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.
<b>Western Australia</b>	1909 – 1954	<i>Aborigines Act 1905</i> <i>Western Australia Natives (Citizenship Rights) Act 1944</i> Summary table of WA legislation	Police, protectors and justices of the peace could remove any ‘half-caste’ child to a mission. Extended to all ‘natives’ under 21 in 1936.
<b>Victoria</b>	1871–1957	<i>Aborigines Protection Act 1869</i> <i>Aborigines Act 1957</i> Summary table of Victorian legislation	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.

## 1.14 What is the Apology?

On 13 February 2008, the then Prime Minister Kevin Rudd apologised on behalf of all Australians for the laws and policies which afflicted pain, suffering and loss on the Stolen Generations of Aboriginal and Torres Strait Islander peoples.

The **Apology** was adopted with the support of all political parties.

It was a key recommendation of *Bringing them home*, the Australian Human Rights Commission's 1997 report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.

The report identified that a national apology would contribute to the proper recognition of Aboriginal and Torres Strait Islander peoples as our first nations peoples and to national healing and reconciliation.

### Find out more

Australian Reconciliation Barometer 2010, Reconciliation Australia (2011)

## 1.15 What is native title?

Native title is the name given by Australian law to Aboriginal and Torres Strait Islander peoples' traditional rights to their lands and waters.

Native title rights are not granted by governments and cannot be withheld or withdrawn by Parliament or the Crown. They can, however, be extinguished by an Act of Government.

To have their native title rights recognised, the Aboriginal and Torres Strait Islander group must prove that they continue to have a connection with their land according to their traditional laws.

In many cases, native title rights and interests have been extinguished by the creation of titles and interests in land following colonisation.

Native title cannot be recognised on land which is fully owned (freehold title) by someone else.

In some cases, Aboriginal and Torres Strait Islander and non-Indigenous interests in land can co-exist. Where it has not, it is measured against a bundle of rights, which range from a right of access to hunt, fish or gather, to exclusive possession. This depends on the evidence to substantiate a claim. For example, Aboriginal and Torres Strait Islander peoples may be able to visit their country freely even though it is on a cattle station. However, wherever there is a conflict between the two sets of interests, the non-Indigenous interest will prevail.

How many native title determinations have been made?

The National Native Title Tribunal *2010–2011 Annual Report* states that as at 30 June 2011, there were 160 registered determinations of native title (including 119 that native title exists) and 497 registered indigenous land use agreements.<sup>112</sup>

Is native title the same as land rights?

Native title is not the same as land rights. Land rights are granted through state-based legislation, while native title is federal law that recognises rights based on the traditional laws and customs that existed before colonial occupation.

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 from the time of colonisation.

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.

The decision recognised for the first time that Aboriginal and Torres Strait Islander peoples 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.

### **1993: The *Native Title Act 1993* (Cth)**

The *Native Title Act 1993* (Cth) 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.

### **1996: The question of pastoral leases – the *Wik* case**

In the *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.

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

In response to the *Wik* case, the Australian Government amended the Native Title Act to:

- reduce the right to negotiate so that it only applies to mining activities and some compulsory acquisitions
- validate leases granted by governments that were thought to be invalid because of native title, and confirmed the extinguishment of native title on a range of leases and other land tenures, such as freehold land
- upgrade pastoral leaseholds by increasing the activities that could take place under the lease without having to negotiate with native title holders
- introduce ‘Indigenous Land Use Agreements’, which provide native title groups with an opportunity to negotiate binding agreements with others, including pastoralists and mining companies, about their lands and waters.

The amendments also set out conditions that native title applications need to be registered on the Register of Native Title Claims.

The issue of the level of proof required for Aboriginal and Torres Strait Islander peoples to have their native title recognised was considered by the United Nations Committee for the Elimination of all forms of Racial Discrimination (CERD) in 2005<sup>113</sup> and was found to be in breach of Australia’s international human rights obligations. CERD has continued to criticise the Australian Government for its failure to amend the native title legislation, in particular the high standard of proof required of claimants.<sup>114</sup>

### **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.

### **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.

### **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.

### **2009: Native Title Amendment Act 2009 (Cth)**

This Act amended the *Native Title Act 1993* (Cth) by giving the Federal Court the central role in managing native title claims, including determining whether claims will be mediated by the Court, the National Native Title Tribunal or another individual or body.<sup>115</sup>

### **2010: Native Title Amendment Act (No. 1) 2010 (Cth)**

The amendments in this Act created a new native title process for the construction of public housing and infrastructure in communities on Indigenous held land which is, or may be, subject to native title. The new process provides for consultation with native title parties about the delivery of housing and infrastructure, and ensures native title is not extinguished by these projects. It also provides for compensation where native title is affected.<sup>116</sup>

## Read more about

- The *Mabo* case.
- The *Native Title Act 1993* (Cth).
- The *Wik* case.
- The *Croker Island* case.
- The *Ward* case.
- The *Yorta Yorta* case.

## Chapter 2:

# Questions and answers about migrants, temporary entrants and multiculturalism

### 2.1 How do people come to Australia?

Australia's immigration system comprises a permanent Migration Program, a Humanitarian Program and a significant Temporary Entry Program.

All migrants in these categories must apply for a visa to come to Australia.

New Zealanders enter, live and work in Australia without requiring a visa, and form the majority of Australia's non-program migration.

#### Permanent Migration Program

Migrants can come to Australia under three streams of the permanent Migration Program: skill, family and special eligibility. Each category is governed by detailed rules, and selection is based on a case by case assessment of applications.

In 2010–2011, the permanent migration program comprised:

- skill stream – 67.4%
- family migration – 32.3%
- special eligibility – 0.3%.<sup>117</sup>

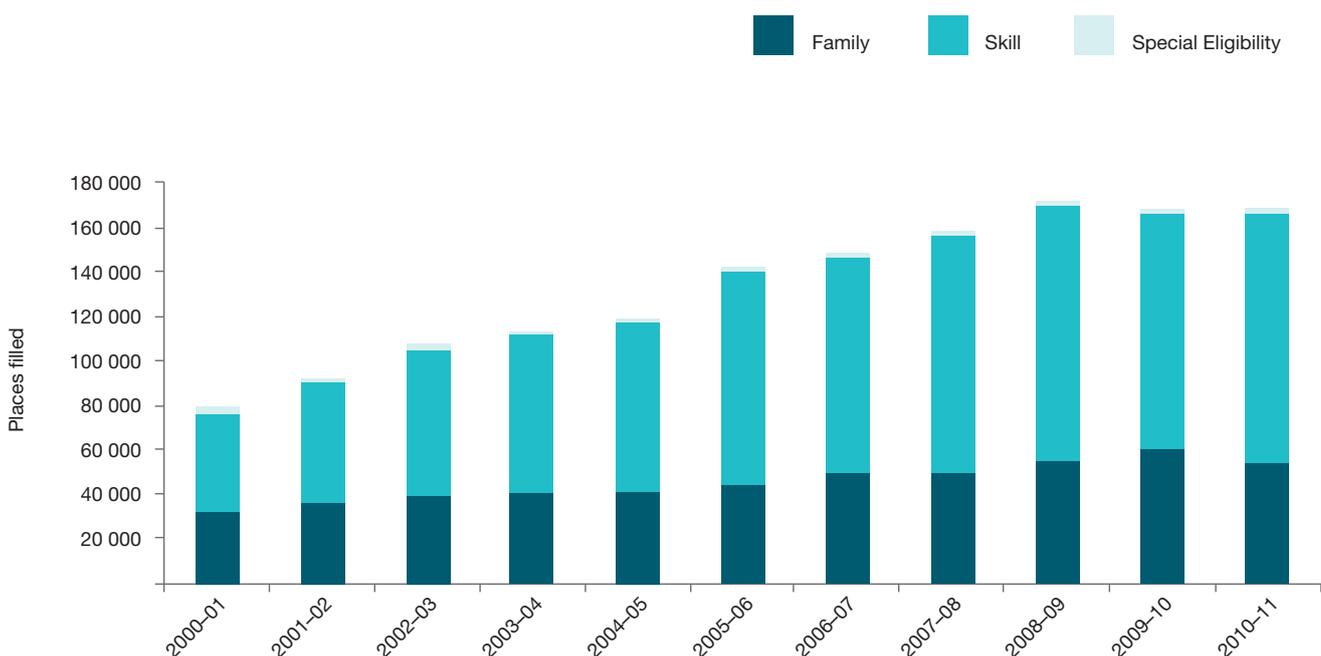
The number of places in the permanent Migration Program is capped by the Australian Government. For 2011–2012, this been announced at 185 000 places, comprising:

- 125 850 skill stream places
- 58 600 family places
- 550 special eligibility.<sup>118</sup>

#### (a) Skill stream

The skill stream is open to migrants who have the skills and qualities needed to succeed in the Australian labour market and to make a long-term economic contribution.<sup>120</sup>

Figure 2.1: Australia's Migration Program 2000–01 to 2010–11: streams<sup>119</sup>



Skill stream migrants are granted visas based on a variety of eligibility criteria. In 2010–2011, 113 725 people came to Australia as skilled migrants,<sup>121</sup> comprising:

- 44 345 Employer Sponsored
- 61 459 General Skilled Migration
- 7 796 Business Skill
- 125 Distinguished Talent.<sup>122</sup>

Since 2000, skilled migrants have comprised the majority of Australia's Migration Program. In 2010–2011, skilled migrants constituted two thirds of the Program, a 5.4% increase on 2010–2011.

- **Employer Sponsored migrants**

Employer Sponsored migrants must be sponsored by a prospective employer. They may work for an employer in another country before transferring to their employer's Australian workplace. They may also be new employees recruited to meet specific skill shortages, particularly in regional areas of Australia.

In 2010–11, 44 345 Employer Sponsored Migrants were granted visas, comprising 39% of the skills stream.<sup>123</sup> The majority (88.1%) of Employer Sponsored Migrants came from onshore applications.<sup>124</sup>

- **General Skilled Migration (GSM)**

Migrants who are not sponsored by a relative or employer must pass a **points test** to be granted a visa, with points awarded based on the person's age, skills, qualifications, English language ability and employability.

In 2010–11, 61 459 visas were granted under this category, comprising:

- 36 167 Skilled Independent
- 16 175 State/Territory Sponsored
- 9117 Skilled Australian Sponsored<sup>125</sup>

- **Business Skills migrants** have demonstrated business success and are encouraged to develop business activity in and settle in Australia. In 2010–2011 there were 7 796 business skills migrants to Australia.

- There were also 125 **Distinguished Talent migrants**, with special or unique talents of benefit to Australia, such as internationally recognised sports people, musicians, artists and designers.<sup>126</sup>

## Find out more

Overview of Skilled Migration; Fact Sheet 24, Department of Immigration and Citizenship (2010)

Skill Matching Database; Fact Sheet 28, Department of Immigration and Citizenship (2010)

## Family migration

Family migration aims to reunite families by allowing the partners, children, siblings and parents of Australian residents to live in Australia.

Migrants in this category are assessed and selected according to their relationship with their sponsor, usually a partner, fiancé, dependent child or parent, who must be an Australian resident or citizen.

The family stream grew from 32 040 arrivals in 1998–99 to 54 708 in 2010–2011 (comprising 13 624 onshore and 41 084 offshore).<sup>127</sup> While the 2010–2011 figures indicate a drop in the family stream arrivals from 60 254 in 2009–10,<sup>128</sup> they are an increase on the 50 079 arrivals from 2006–07.<sup>129</sup>

Unlike skill stream migrants, there is no test for professional skills or English language ability in this category.

## Find out more

Overview of Family Migration; Fact Sheet 29, Department of Immigration and Citizenship (2010)

### Special eligibility

Special eligibility covers former residents who had not acquired Australian citizenship and are seeking to return to Australia as permanent residents. In 2010–2011, there were 653 arrivals under the special eligibility category.<sup>130</sup>

#### Find out more

Special Eligibility Stream; Fact Sheet 40, Department of Immigration and Citizenship (2011)

### Humanitarian Program

Australia operates a Humanitarian Program for refugees and others in need of special humanitarian assistance. In 2010–11 a total of 13 799 visas were granted under the Humanitarian Program, including onshore and offshore components.<sup>131</sup>

See Chapter 3 for more information on Australia's Humanitarian program, including questions and answers about asylum seekers and refugees.

### Temporary Entry Program

The Temporary Entry Program allows people from overseas to come to Australia on a temporary basis for specific purposes. Temporary entrants include visitors, students, and business people applying for either short or long-term temporary stay. A growing number of people who are already in Australia on temporary visas (such as student or business visas) apply for and are granted visas allowing them to stay permanently in Australia.

Temporary entrants are discussed further in sections 2.7 – 2.11.

#### Find out more

Immigration: The Background; Fact Sheet 1, Department of Immigration and Citizenship (2011)

### Non-program

Non-program migration encompasses New Zealanders, under the *Trans-Tasman Travel Arrangement*, and 'Other', primarily children born Australian to citizens overseas, and residents of Cocos (Keeling) islands, and Norfolk Island.

New Zealand citizens can freely enter, live and work in Australia without a visa under the *Trans-Tasman Travel Arrangement*. They are not counted as part of the migration program, but constitute the majority of non-program migration.

#### Find out more

New Zealanders in Australia; Fact Sheet 17, Department of Immigration and Citizenship (2011)

## 2.2 Who can migrate?

People from any country can apply for visas to migrate to Australia. Depending on the type of visa for which they have applied, migrants must meet certain entrance criteria, and pass health and character checks.

#### Find out more

The Health Requirement; Fact Sheet 22, Department of Immigration and Citizenship (2010)

The Character Requirement; Fact Sheet 79, Department of Immigration and Citizenship (2011)

#### Did you know?

From 1901, the *Immigration Restriction Act 1901* (Cth) was used to restrict immigration from non-European countries. The White Australia policy was abolished in the 1970s.

Source: Abolition of the 'White Australia' Policy; Fact Sheet 8, Department of Immigration and Citizenship (2010)

## 2.3 How many people migrate to Australia?

In 2010–2011, 213 409 new migrants settled permanently in Australia,<sup>132</sup> including:

- 127 458 settler arrivals: people living overseas who applied for and were granted a visa allowing them to enter and stay permanently in Australia
- 85 951 onshore grants: people already living in Australia on temporary visa arrangements (such as student or business visas) who applied for and were granted a visa allowing them to stay permanently in Australia.<sup>133</sup>

In 2010–2011, Australia’s net permanent addition (permanent arrivals minus permanent departures) was 124 948 people.<sup>134</sup>

### Settler arrivals

The number of settler arrivals changes each year according to the number of visas issued by the Department of Immigration and Citizenship.

In 2010–2011, the 127 458 settler arrivals comprised:

- 40 547 arrivals under the skill stream
- 41 084 arrivals under the family migration stream
- 281 arrivals under special eligibility criteria
- 9130 arrivals under the Humanitarian Program
- 36 416 non-program arrivals.<sup>135</sup>

Although there were a series of increases in settler arrivals from 2001–02 until 2008–09, the current number of settler arrivals is close to 2005–2006 levels.<sup>136</sup>

### Onshore migrants

In 2010–2011, the 85 951 onshore grants comprised 67 109 onshore skilled migrant visas, up from 46 672 in 2009–2010.<sup>137</sup> This increase reflected the Australian Government’s expansion of skilled migration places to accommodate an improved labour market and areas of skills shortages in the Australian economy.<sup>138</sup>

In the same period, 13 624 onshore family visas were issued, down from 16 458 in 2009–2010.<sup>139</sup>

The remaining onshore grants for 2010–2011 comprised 372 special eligibility, and 4846 onshore humanitarian visas.<sup>140</sup>

Table 2.1: Australia’s Migration Program 2009–10 and 2010–11<sup>141</sup>

Stream	Skill			Family			Special eligibility		
Purpose	Allows for the migration of those with skills and abilities which will contribute to the economy.			Allows for the permanent entry of those with close family ties in Australia.			Allows for former permanent residents who meet certain criteria to remain in or return to Australia as permanent residents.		
	Comprising: Employer Sponsored Business Skills General Skilled Migration Distinguished Talent			Comprising: Partners Dependent Children Parents Other Family					
Program year	2009–10	2010–11	↑↓	2009–10	2010–11	↑↓	2009–10	2010–11	↑↓
<b>Planning levels</b>	108 100	113 850	5.3%	60 300	54 550	-9.5%	300	300	0.0%
<b>Visas granted</b>	107 868	113 725	5.4%	60 254	54 543	-9.5%	501	417	-16.8%
<b>Females</b>	47.6%	47.3%	-0.3%	63.4%	64.7%	1.3%	48.1%	50.4%	2.3%
<b>Primary applicants</b>	43.1%	49.4%	6.3%	84.2%	85.0%	0.8%	53.9%	54.7%	0.8%
<b>Onshore applicants</b>	43.3%	59.0%	15.7%	27.3%	85.4%	58.1%	96.6%	89.2%	-7.4%

## 2.4 Where do migrants come from?

Australia's Migration Program is open to anyone from any country, regardless of their nationality, ethnic origin, gender or colour, provided that they meet the criteria set out in law.<sup>142</sup>

In 2010–2011, people from 185 different countries migrated to Australia. China was Australia's largest source of permanent migrants, accounting for 29 547 places or 17.5 % of the total migration program, up from 24 768 or 19.3% in 2009–10.<sup>143</sup>

The top ten citizenships of permanent migrants in 2010–2011 were:

- China 29 547
- United Kingdom 23 931
- India 21 768
- Philippines 10 825
- South Africa 8612
- Malaysia 5130
- Vietnam 4709
- Sri Lanka 4597
- South Korea 4326
- Ireland 3700.<sup>144</sup>

## 2.5 Where do migrants settle in Australia?

In 2010–2011, New South Wales was the most popular state for permanent migrants, with 30.8% of permanent additions intending to settle there, followed by Victoria (24.9%), Queensland (18.2%) and Western Australia (16.0%) (see also Table 2.2).<sup>145</sup>

## 2.6 What are the impacts of migration?

### Economic

Migrants contribute to the economic development of Australia in a variety of ways, including:

- filling skill and labour shortages
- creating demand for goods and services
- investing in the Australian economy.

Migrants can also foster Australia's international trade through:

- their business networks
- speaking a language other than English
- their knowledge of overseas markets and cultural practices.

Table 2.2: Permanent additions by category to the states and territories, 2009–10<sup>146</sup>

State/Territory	Family Stream %	Skill Stream %	Humanitarian Program %	Special and other categories %	New Zealand citizens %
<b>NSW</b>	37.35	44.62	7.43	1.38	9.22
<b>VIC</b>	29.47	52.71	6.83	0.95	10.05
<b>QLD</b>	24.68	44.31	4.00	0.88	26.13
<b>WA</b>	19.74	62.05	8.56	0.64	9.01
<b>SA</b>	18.57	70.48	7.20	0.63	3.11
<b>ACT</b>	32.34	55.34	5.39	1.34	5.58
<b>NT</b>	24.96	64.71	4.19	1.24	4.90
<b>TAS</b>	25.45	42.19	22.82	1.28	8.26
<b>Australia<sup>1</sup></b>	28.46	51.84	6.97	1.04	11.70

Includes 'not stated' and 'other territories'

Migration raises average incomes and grows the economy, generating wealth and employment for all Australians. For example, based on economic modelling in relation to the 2010–11 Migration and Humanitarian Program, Access Economics estimates that migrants will provide Australia with an estimated fiscal benefit of over 10 billion dollars over their first ten years of settlement.<sup>147</sup>

## Find out more

The Social Costs and Benefits of Migration into Australia; K Carrington, A McIntosh, and J Walmsley, University of New England (2007)

## Employment

Migrants are better able to participate in the local workforce the longer they live in Australia. Their unemployment rate is higher than the Australian average immediately after they arrive, however, this falls significantly over time.<sup>148</sup>

Research suggests that the success with which new migrants find jobs is related to their proficiency in English, age, skill level and qualifications.<sup>149</sup>

Over a third of migrants (36%) struggle to gain employment. This may be attributed to discrimination, a lack of Australian work experience, references and local contacts and networks.<sup>150</sup> And while 60% of recent migrants arrive in Australia with a post-school qualification, only 34% have their qualification recognised in Australia.<sup>151</sup>

Skilled migrants fare significantly better and become active participants in the Australian labour market in a short time.

A 2009 survey found the unemployment rate of skilled migrants was just 5% (below the 5.7% national unemployment rate at the time of the survey). In addition, their labour participation rate was 95%, compared with 65% for Australia's working age population.<sup>152</sup>

Research shows that immigration does not lead to higher rates of unemployment.<sup>153</sup> Indeed, migrants create jobs by increasing demand for goods and services.

## Find out more

Migrant Labour Market Outcomes; Fact Sheet 14, Department of Immigration and Citizenship (2010)

Additional results from the Continuous Survey of Australia's Migrants

Continuous Survey of Australia's Migrants (Group 1, Wave 1), (October 2009)

## Welfare

Migrants must live in Australia as a permanent resident for at least two years before they can access most social security payments, including unemployment assistance, sickness benefits and student allowances.<sup>154</sup>

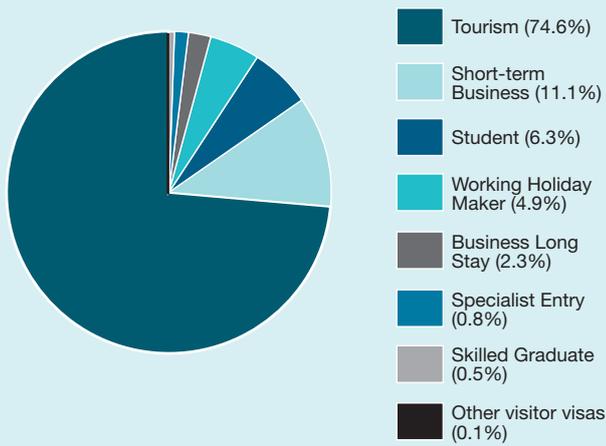
Most new migrants are not eligible for age or disability pensions until ten years after arriving in Australia.<sup>155</sup>

As part of their visa application, some family migrants are required to have an Assurance of Support lodged for them. Usually, but not necessarily, this is provided by a migrant's sponsor.<sup>156</sup> It is a legal commitment to repay the Australian Government certain welfare payments received during their Assurance of Support Period.

## Find out more

Assurance of Support; Fact Sheet 34, Department of Immigration and Citizenship (2010)

**Figure 2.2: Overview of selected temporary entry visas granted 2010–11<sup>158</sup>**



### Find out more

Temporary Entry: An Overview, Fact Sheet 46; Department of Immigration and Citizenship (2011)

Temporary Residence in Australia; Fact Sheet 47, Department of Immigration and Citizenship (2011)

## 2.7 Who can enter Australia temporarily?

Every year, a large number of people enter Australia on a temporary basis. A variety of visas allow people from overseas to come to Australia on a temporary basis for specific purposes, but the three main categories of temporary entry are:

- temporary residents
- students
- visitors.<sup>157</sup>

The temporary entry program is not capped.

In 2010–11, 3 994 830 temporary entry visas were granted, the majority (74%) being tourist visas and short term business visitors (11.1%) (Figure 2.2).

### Temporary resident visas

Temporary resident visas are granted to applicants on the basis of their economic, social, cultural or sporting benefit to Australia, and for periods generally between three months and four years.<sup>159</sup> They are generally sponsored by an Australian business or organisation.

The **Business long stay (subclass 457) visa** enables employers to directly sponsor employees for up to four years, if they have not been able to source workers through the domestic labour market. Subclass 457 visa holders are a category of long-term temporary residents with work rights.

The subclass 457 visa enables workers transition to permanent residency. In 2010–2011, 41 7200 people with 457 visas were granted a place in the permanent migration program; 96.2% were granted a permanent skilled visa and 3.9% were granted a family visa.<sup>160</sup>

Temporary residents can also live and work in Australia through the **Working Holiday Program**, which enables young people from eligible countries to holiday and work in Australia for periods up to 12 months; and through the **short term business visitor** program.

### International Students

International students are granted visas for a specific period to undertake formal and informal study. In 2010–2011, 250 438 student visas were issued, representing a 7.4% decrease on 2009–2010 figures, and a 21.6% decrease on the 319 632 visas granted in 2008–09.

This decrease reflects a decline in demand, particularly from applicants from South Korea (down 19.4% on 2009–2010 and India (down 55.8% from 2008–2009).

However, compared to other nations, Australia has the largest number of international students as a proportion of its total tertiary enrolments. Australia is ranked as the world’s third most popular English-speaking study destination, and the fifth most popular overall.<sup>161</sup> In 2011, there were 519 025 international students enrolled in Australia.<sup>162</sup>

### Find out more

The Australian Human Rights Commission works in partnership with others to address issues facing international students in Australia. Read about recent projects at: [www.humanrights.gov.au/racial\\_discrimination/international\\_students.html](http://www.humanrights.gov.au/racial_discrimination/international_students.html)

## 2.8 How many people temporarily enter Australia?

In 2010–2011 there were:

- 504 671 temporary resident arrivals
- 464 955 student visa arrivals
- 3 098 294 tourism visitor arrivals
- 442 482 business visitor arrivals.<sup>163</sup>

## 2.9 Where do temporary entrants come from?

### Temporary residents

In 2010–2011, there were 504 671 temporary resident arrivals to Australia. Entrants from the United Kingdom accounted for 20%, followed by the United States (7.9%), India (6.4%) and Korea (6.3%).<sup>164</sup>

### International Students

In October 2011, China was the largest source of enrolled international students in Australia (29%), followed by India (12.8%) and the Republic of Korea (5.3%).<sup>165</sup>

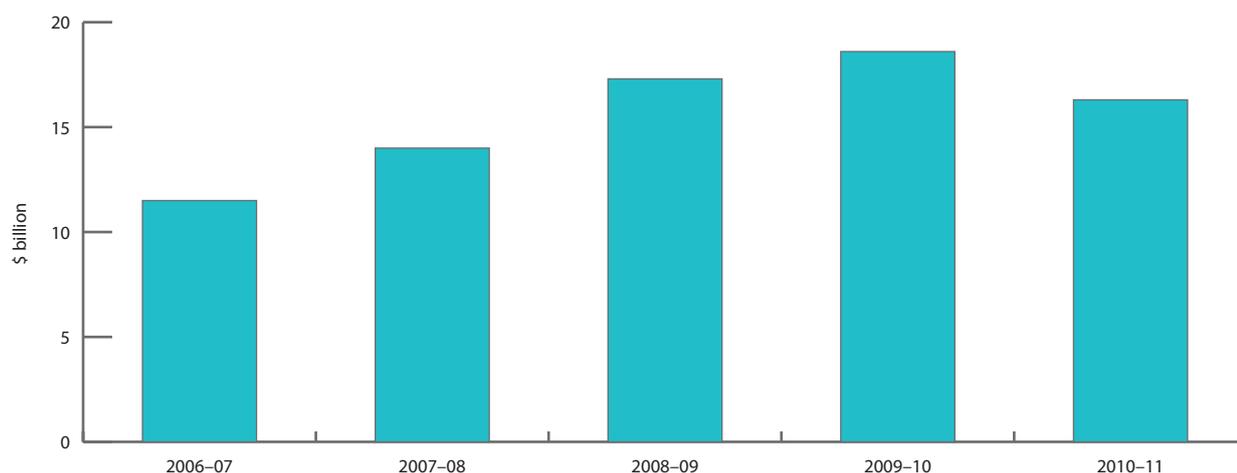
## 2.10 What are the impacts of temporary entrants?

### International Students

In 2010–11, international education activity contributed \$16.3 billion in export income to the Australian economy, down from 18.6 billion in 2009–10.<sup>166</sup> International education supports more than 125 000 jobs.<sup>167</sup>

Compared to other nations, Australia has the largest number of international students as a proportion of its total tertiary enrolments. Australia is ranked as the world’s third most popular English-speaking study destination, and the fifth most popular overall.<sup>168</sup>

Figure 2.3: Export income from education services<sup>169</sup>



## 2.11 How do migrants and temporary entrants affect population growth?

### Population

Australia’s population growth peaked at a rate of 2.2% in the year ending March 2009, but recent data suggests that the annual population growth rate slowed to 1.4% for the year ending March 2011.<sup>170</sup>

Australia’s total population growth is a result of:

- natural increase (the number of births minus the number of deaths)
- net overseas migration (NOM) (the number of people who migrate to Australia minus the number who emigrate or leave Australia for other countries).

For the year ending March 2011, natural increase contributed 46% and net overseas migration contributed 54% to total population growth.<sup>171</sup>

Australia’s preliminary NOM estimate was 167 000 people, a 24% decrease on the NOM recorded for the year ending 31 March 2010, and a 47% decrease from peak of 315 700 for the year ending December 2008. This recent decline is leading to lower overall population growth.<sup>172</sup>

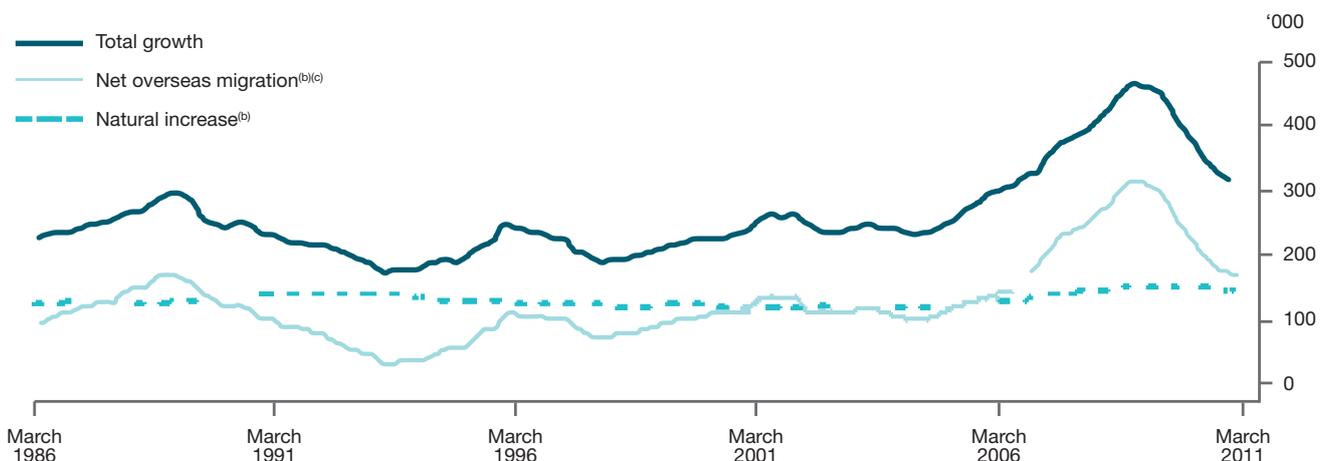
The components making up NOM include offshore arrivals under the permanent Migration and Humanitarian Programs, temporary long-stay migrants such as students and subclass 457 skilled workers, and the free movement of Australian residents and New Zealand citizens (see Table 2.3).

The recent decline in NOM has been driven by policy reform to temporary and permanent skill migration, including changes to student visa settings which have seen increased numbers of international students departing Australia and fewer international students arriving.<sup>175</sup> Forecasts suggest that beyond 2011, NOM will recover and stabilise at 200 000.<sup>176</sup>

However, research suggests that immigration will not be able to fully offset our ageing population, with the proportion of people aged over 65 years projected to increase from 13% in 2007 to between 23% and 25% in 2056.<sup>177 178</sup> It is estimated that within the next few years immigration will be the only source of net labour force growth in Australia. Without immigration, labour force growth will almost cease within the next decade.<sup>179</sup>

The Department of Immigration and Citizenship is developing a long-term immigration planning framework that will inform and guide Australia’s Migration program.<sup>180</sup>

Figure 2.4: Components of population growth (a), Australia<sup>173</sup>



(a) Annual components calculated over each quarter.

(b) NOM estimates for March quarter 2010 onwards, and natural increase estimates for September quarter 2010 onwards are preliminary.

(c) NOM estimates have been calculated using a range of methods over the period, and include a break in series from September quarter 2006 onwards – see paragraphs 12-19 of the Explanatory Notes.

Table 2.3: Composition of final NOM in 2009<sup>174</sup>

NOM component	Description	Drivers	Share of NOM
<b>Permanent</b>			
Net Permanent arrivals	<ul style="list-style-type: none"> <li>• Arrivals under the Permanent Migration Program</li> <li>• Arrivals under the Humanitarian Programs</li> </ul>	The total size of the Permanent Migration and Humanitarian Programs is set by Government	33.5%
<b>Temporary</b>			
Net Temporary residents	<ul style="list-style-type: none"> <li>• International Students</li> <li>• Temporary skilled (457) workers</li> <li>• Working holidays Makers</li> <li>• Tourists and visitors</li> </ul>	Largely uncapped but can be influenced by Government policy settings	63.1%
<b>Others</b>			
Net Other arrivals	<ul style="list-style-type: none"> <li>• Returning Australian citizens and permanent residents</li> <li>• Australian citizens and permanent residents emigrating</li> <li>• New Zealand citizens settling and emigrating</li> </ul>	<p>Australian citizens and permanent residents can have free movement</p> <p>Movement of New Zealand citizens uncapped/free movement under the Trans-Tasman Travel Arrangement</p>	3.4%

## Find out more

Population Projections; Fact Sheet 15, Department of Immigration and Citizenship (2010)

The Outlook for Net Overseas Migration; Department of Immigration and Citizenship (2011)

## 2.12 Who takes up Australian citizenship?

Of the 4.4 million migrants that responded to the Census in 2006, the overall citizenship take-up rate was 68%.<sup>181</sup>

Migrants with permanent residence who satisfy the eligibility requirements may apply for Australian citizenship by *conferral* (meaning they are given citizenship). People born overseas to a parent who is an Australian citizen may apply for citizenship by *descent*.

Research suggests that about 80% of migrants with more than ten years of residence have Australian citizenship, and that people from countries with lower economic or civil opportunities, and refugees in particular, are likely to take-up Australian citizenship.<sup>182</sup>

In 2009–10, 119 791 people from more than 185 countries were approved to become Australian citizens by *conferral*.<sup>183</sup>

Table 2.4 lists the top ten previous citizenships of people who were conferred as Australian citizens during 2009–10.

Table 2.4: Top ten previous citizenships of people who became Australian citizens by conferral during 2009–10<sup>184</sup>

Previous citizenship	Total conferred	Percentage
United Kingdom	22 832	19.1
India	17 781	14.8
China, Peoples Republic of	11 103	9.3
South Africa, Republic of	5207	4.3
Philippines	4503	3.8
New Zealand	4164	3.5
Sri Lanka	3411	2.8
Bangladesh	2939	2.5
Korea, Republic of	2409	2.0
Malaysia	2211	1.9

### Citizenship test

Since 1 October 2007, most permanent residents who apply for citizenship are required to successfully complete the Australian citizenship test.<sup>185</sup>

According to the Department of Immigration and Citizenship, the test aims to better ensure that migrants have the capacity to fully participate in the Australian community. Another key objective is to promote social cohesion and successful integration.<sup>186</sup>

Significant amendments to the *Australian Citizenship Act 2007* (Cth) came into effect on 9 November 2009, which included changes to the citizenship test.

The current citizenship test:

- focuses on the Pledge of Commitment and three key topics: Australia and its people; Australia’s democratic beliefs, rights and liberties; and Government and the law in Australia
- includes questions based on the citizenship test resource book – *Australian Citizenship: Our Common Bond* – which is divided into testable and non-testable sections
- has a pass mark of 75%.

### Find out more

About the Australian citizenship test;  
Department of Immigration and Citizenship

### 2.13 What is multiculturalism?

The term ‘multiculturalism’ has a number of meanings, depending on the context in which it is used. For example:

- it is often used to describe the diverse cultural make up of a society. This publication, for instance, sets out a range of facts which demonstrate the diversity and multicultural character of Australia’s population
- it refers to a set of norms that uphold the right of the individual to retain and enjoy their culture
- it is the name given to a government policy which seeks to recognise, manage and maximise the benefits of cultural diversity.<sup>187</sup>

The Australian Government launched *The People of Australia – Australia’s Multicultural Policy* in February 2011, replacing the 2003 policy statement, *Multicultural Australia: United in Diversity*.

The 2011 policy recognises the breadth and diversity of Australian society and reaffirms the Australian Government's support for a culturally diverse and socially cohesive nation. It highlights the economic and social benefits of diversity, as well as the need to balance the rights and responsibilities of all people who live in Australia.

The *People of Australia* policy is based on four guiding principles:

- celebrating and valuing diversity
- maintaining social cohesion
- communicating the benefits of Australia's diversity
- and responding to intolerance and discrimination.

An independent body – the **Australian Multicultural Council** – was launched in August 2011 to advise the Australian Government on policies and emerging issues.

The Australian Government has committed to implementing a **National Anti-Racism Partnership and Strategy** to counter racism and discrimination. It will focus on five key areas: research and consultation; education resources; public awareness; youth engagement; and ongoing evaluation.

## Find out more

Australia's Multicultural Policy; Fact Sheet 6, Department of Immigration and Citizenship (2011)

National Anti-Racism Strategy website

## 2.14 How diverse are Australians?

Following decades of migration from a range of countries, Australia has become a culturally diverse nation. Since 1945, almost seven million people have migrated to Australia.<sup>188</sup>

One in four of Australia's 22 million people was born overseas; 44% were born, or have a parent who was born, overseas; and four million speak a language other than English. Australians speak over 260 languages and identify with more than 270 ancestries.<sup>189</sup>

### Overseas-born

According to the 2006 Census, 22% of Australia's population were born overseas.<sup>190</sup>

Western Australia had the highest proportion of its population born overseas (27.1%), followed by New South Wales and Victoria (both with 23.8%), Australian Capital Territory (21.7%), South Australia (20.3%), Queensland (17.9%), Northern Territory (13.8%) and Tasmania (10.6%).<sup>191</sup>

In capital cities, Sydney had the highest proportion of its population born overseas (31.7%) and Hobart had the lowest proportion (12%).<sup>192</sup>

The top five places of birth of people born overseas were England (4.3%), New Zealand (2%), China (1%), Italy (1%) and Vietnam (0.8%).<sup>193</sup>

In 2009, 11.8% of marriages in Australia were between people born in the same overseas country, and 30.1% of marriages were between people with different countries of birth.<sup>194</sup>

### Ancestry

The 2006 Census found that 6 735 993 Australians had both parents born overseas; 3 352 255 had one parent born overseas; and 10 282 282 had both parents born in Australia.<sup>195</sup>

### Language

In 2006, 3 146 196 Australians spoke a language other than English at home.

After English (15 581 332 speakers), the most common languages were Italian (316 894), Greek (252 216), Cantonese (244 557), Arabic (243 672) and Mandarin (220 597).<sup>196</sup>

### Religion

According to the 2006 Census, 3 643 811 Australians had no religion and 2 223 953 did not state their religion.

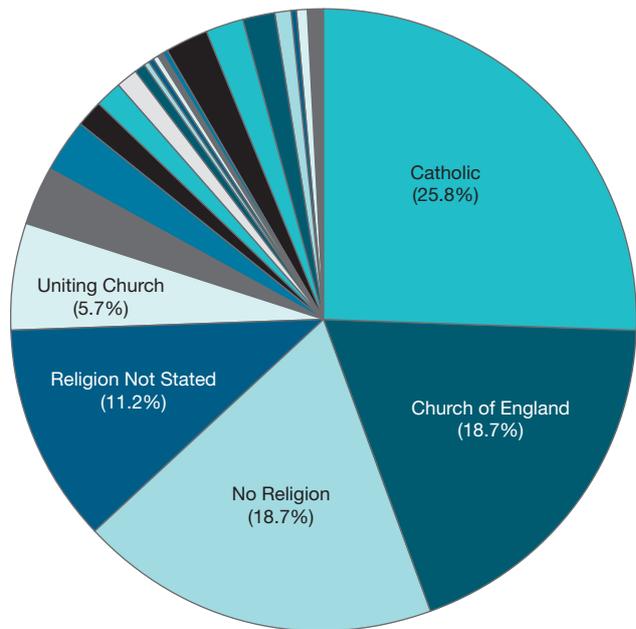
Of those who did state their religion, 5 087 117 Australians were affiliated with the Catholic Church (25.8% of the total population), followed by 3 718 240 Anglicans (18.7%). There were also 418 754 Buddhists (2.1%); 340 389 Muslims (1.7%); 148 127 Hindus (0.7%); and 88 834 Jews (0.4%).<sup>197</sup>

## Find out more

Freedom of Religion and Belief in the 21st Century; Australian Human Rights Commission (2011)

**Figure 2.5: Australia's religious profile (2006)<sup>198</sup>**

Inadequate Description/Not Further Described (0.7%)  
 Other Religions<sup>(b)</sup> (0.5%)  
 Jews (0.4%)  
 Hinduism (0.7%)  
 Islamic (1.7%)  
 Buddhism (2.1%)  
 Other Christian<sup>(a)</sup> (2.1%)  
 Latter Day Saints (0.3%)  
 Church of Christ (0.3%)  
 Seventh Day Adventist (0.3%)  
 Protestant (Undefined/Other) (0.3%)  
 Salvation Army (0.3%)  
 Jehovah's Witness (0.4%)  
 Pentecostal (1.1%)  
 Lutheran (1.3%)  
 Baptist (1.6%)  
 Eastern Orthodox (2.7%)  
 Presbyterian and Reformed (3.0%)



- (a) Includes Christian denominations with smaller percentages of the total population, including: Oriental Christian/ Orthodox, Brethren, Assyrian Apostolic and all other Christian.
- (b) Includes Australian Aboriginal religions at 0.03% and religions at 0.01% including: Chinese religions, Japanese religions, Scientology, Wicca, other nature religions, Paganism and Satanism.

## 2.15 What is racism?

Racism is a belief that a particular race or ethnicity is inferior or superior to others. Racism is any act that involves a person being treated unfairly or vilified because of their race or ethnicity.

Racist behaviour is any act that is done as a result of or in pursuit of that belief.

### Racial discrimination

The *Racial Discrimination Act 1975* (Cth) (RDA) was Australia's first federal anti-discrimination statute.

It aims to ensure that people of all backgrounds are treated equally and protects individuals against discrimination on the basis of their race, colour, descent, or national or ethnic origin.

In 1995, the RDA was extended to make racial vilification against the law.

The RDA gives effect to Australia's obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*, which the Australian Government ratified in September 1975.

### Find out more

Know your rights: Racial discrimination and vilification; Australian Human Rights Commission (2012)

### Systemic discrimination

The RDA has provisions against direct and indirect discrimination. Another form, systemic discrimination, occurs when institutions – such as public and private organisations, educational institutions and others – operate with normalised beliefs, values, presumptions, structures and processes which disadvantage people from different racial backgrounds. Systemic discrimination can impede equal access to goods, services and opportunities.

While the RDA does not address systemic racism, individual complaints made under the RDA (such as individual complaints of indirect discrimination) can assist in drawing attention to issues of systemic racism.

## 2.16 How prevalent is racism?

New research, such as the Scanlon Foundation's 2011 *Mapping Social Cohesion Report* and the *Challenging Racism* project, provide valuable information about the perspectives and experiences of everyday Australians in relation to racism and cultural diversity.

According to the *Challenging Racism* project, while the majority of people (87%) agree that Australia's cultural diversity is a good thing, around one in ten Australians believe that some races are naturally inferior or superior.<sup>199</sup> Recent Scanlon Foundation research suggests that in Australia there is a "core level of intolerance" numbering at least 10% or 1.5 million of the adult population, with relatively high levels within some regions and demographic segments.<sup>200</sup>

The *Challenging Racism* project found that many Australians experience racism on a regular basis:

- approximately 20% have experienced race-hate talk
- around 11% have experienced race-based exclusion from social activities and/or their workplace
- 6% reported physical attacks based on their race and/or traditional dress.<sup>201</sup>

The 2011 *Mapping Social Cohesion Report* also found evidence of heightened experience of discrimination:

- when respondents were asked if they had experienced discrimination in the preceding 12 months, 14% in 2011 reported an experience of discrimination because of their 'skin colour, ethnic origin or religion, maintaining the 2010 level, but an increase on the 9% in 2007, and 10% in 2009<sup>202</sup>
- when respondents were asked whether 'the level of racial prejudice in Australia now is more, less or about the same as it was five years ago', 37% considered it was at the same level, but those who considered that the level of racial prejudice was higher outnumbered those who considered it to be lower by a ratio of almost 3:1 (43% compared to 14.4%).<sup>203</sup>

A 2006 survey of 4010 Australians found that most Australians support action against racism, with 85.6% agreeing that something should be done to minimise or fight racism in Australia.<sup>204</sup>

Statistics on the number and type of complaints made under the RDA are available in the Commission's annual reports. Examples of conciliated complaints are available on the Commission's conciliation register.

Do some migrant groups experience racism more than others?

Research suggests that 'settled' immigrants tend to experience lower levels of racism or racist attitudes than more recent arrivals to Australia.<sup>205</sup> There is also evidence of markedly higher levels of negative feelings towards Muslim Australians.<sup>206</sup>

The Commission's recent work with *Arab and Muslim Australians* and *African Australians* also suggests that these communities are at a higher risk of experiencing discrimination and prejudice.

### Find out more

**Does racial and ethnic discrimination vary across minority groups?** Evidence from three experiments; study, conducted by ANU economists Professor Alison Booth and Professor Andrew Leigh from the Research School of Social Sciences (2009)

**National Origins: Public Opinion Fact Sheet 3;** Scanlon Foundation Social Cohesion Research Program, Monash University (2010)

## 2.17 What are the impacts of racism?

Racism and racist attitudes can have a lasting impact on people's lives.

They can seriously undermine people's confidence and self-esteem and limit their opportunities in the workplace, in education, in where they live and in how they engage with their communities. Some research suggests a link between ethnic and race-based discrimination and poor mental health and wellbeing.<sup>207</sup>

Race-based discrimination has a negative impact on families and local communities, with serious social and economic costs.

Research shows that there are significant links between race-based discrimination and ill health, reduced productivity, reduced life expectancy and morbidity.<sup>208</sup>

### Find out more

**Ethnic and race-based discrimination as a determinant of mental health and wellbeing;** VicHealth (2008)

## Chapter 3:

# Questions and answers about asylum seekers, refugees and immigration detention

### 3.1 Asylum seekers and refugees

The terms 'asylum seeker' and 'refugee' are often confused. An asylum seeker is someone who says that he or she is a refugee but whose claim has not yet been assessed. A refugee is someone who has been assessed by a national government or an international agency (such as the office of the **United Nations High Commissioner for Refugees (UNHCR)**) and meets the criteria set out under the *Convention Relating to the Status of Refugees 1951* (Refugee Convention).

Countries that have ratified the Refugee Convention, such as Australia, are obliged to assess asylum seekers' claims for protection according to that Convention.<sup>209</sup>

### 3.2 How many asylum seekers are there?

Approximately 845 000 people claimed asylum or refugee status worldwide in 2010.<sup>210</sup>

As Australia shares no national border with any other country and is far from most major conflicts, comparatively few people seek asylum here. In 2010, 8250 people applied for asylum in Australia, which is less than 2% of the total number of asylum seekers worldwide at that time.<sup>211</sup> In comparison, over 180 000 people applied for asylum in South Africa in 2010; while 54 000 applied for asylum in the United States; 48 000 in France; 41 000 in Germany and 31 000 in Ecuador.<sup>212</sup>

#### Find out more

Asylum Levels and Trends in Industrialized Countries, 2011; United Nations High Commissioner for Refugees (2012)

### 3.3 Who is a refugee?

The Refugee Convention defines who is a refugee and sets out the basic rights that countries should guarantee to refugees.<sup>213</sup>

According to the Refugee Convention, a refugee is someone who is outside his or her own country and

cannot return due to a well-founded fear of persecution because of his or her **race, religion, nationality, membership of a particular social group or political opinion**.<sup>214</sup>

As soon as a person in this situation crosses an international border, he or she is a refugee. The person's refugee status is confirmed when his or her claim is assessed, either by a national government or an international agency, such as the UNHCR, and he or she is found to meet the definition of a refugee.

The term 'refugee' is often used more broadly than its legal definition allows. In popular usage, it generally includes all people who flee their homes to seek refuge from any kind of harm or threat of harm, such as war, civil strife, domestic violence, poverty or environmental collapse.

However, the legal definition is narrower than this and only applies to people who can show they have a well-founded fear of persecution because of their race, religion, nationality, membership of a particular social group or political opinion.

#### Find out more

Refugees Guide; OneWorld website

### 3.4 How many refugees are there?

There were approximately 15.4 million refugees around the world at the end of 2010.<sup>215</sup> Of these, 10.55 million were under the responsibility of the UNHCR and 4.82 million were Palestinian refugees under the responsibility of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.<sup>216</sup>

In 2010, developing countries hosted 80% of the world's refugees and 75% of refugees lived in countries neighbouring their country of origin. Thirty-eight per cent of all refugees resided in countries in the Asia Pacific region; 20% in Sub-Saharan Africa; 18% in the Middle East and North Africa; 15% in Europe; and 8% in the Americas.<sup>217</sup>

Countries hosting the largest numbers of refugees included: Pakistan, which was home to 1.9 million refugees; Iran, which hosted 1.07 million refugees; and Syria, which was home to just over 1 million refugees.<sup>218</sup> Australia hosted 21 805 refugees in 2010.<sup>219</sup>

The country of origin for the highest number of refugees in 2010 – 3.05 million people – was Afghanistan. Iraqis make up the second largest group of refugees in the world at 1.68 million people. Afghans and Iraqis together account for 45% of all refugees under the UNHCR's responsibility. The third largest group of refugees in 2010, numbering 770 000 people, originated from Somalia, while the fourth largest group comprised 477 000 people from the Democratic Republic of Congo.<sup>220</sup>

In 2010, females represented 49% of most populations under the responsibility of the UNHCR. Of all persons of concern to the UNHCR 47% were children under the age of 18 and 5% were 60 years or older.<sup>221</sup>

### Find out more

The refugee story in statistics; United Nations High Commissioner for Refugees website

## 3.5 How do asylum seekers and refugees differ from migrants?

Asylum seekers or refugees and migrants have very different experiences and reasons for moving to another country.

Migrants choose to leave their home country. They can also choose where to go and when they might return to their home country.

Asylum seekers and refugees, on the other hand, flee their country for their own safety and cannot return unless the situation that forced them to leave improves.

Migrants may belong to vulnerable groups and they can face similar challenges to refugees when travelling to and settling in a new country. However, these two groups of people are treated very differently under international law.

See Chapter 2 for questions and answers about migrants and migration.

## 3.6 What is the role of the United Nations High Commissioner for Refugees?

The UNHCR was established in 1950 by the United Nations General Assembly and began operating the following year. It was initially established for a three-year term to protect the interests of the remaining refugees who had been displaced by the Second World War. However, far from disappearing, the problem of displacement developed into a persistent worldwide issue in the second half of the twentieth century.

The UNHCR currently operates in 125 countries and helps approximately 33.9 million people.<sup>222</sup> Its role is to safeguard the rights and well-being of refugees and to coordinate international action to protect refugees. It also has a mandate to help stateless people.<sup>223</sup>

The UNHCR has identified three preferred, durable solutions for the problems facing refugees:

- voluntary return to their country of origin in conditions of safety and dignity
- local integration into a country of asylum if a safe return to the country of origin is not possible
- resettlement in a third country if neither of the first two options is possible or suitable.<sup>224</sup>

The UNHCR encourages countries to frame their national refugee laws and policies around these three solutions.<sup>225</sup>

### Find out more

Durable Solutions: Repatriation, Resettlement, Local Integration; United Nations High Commissioner for Refugees

### 3.7 What obligations does Australia owe asylum seekers and refugees?

Australia is one of 145 countries to have ratified the Refugee Convention.<sup>226</sup> This means that Australia has committed to respect the rights of refugees and to uphold the obligations set out in the treaty.

Crucially, as a party to the Convention, Australia has agreed to never return a refugee to a country where he or she has reason to fear persecution.<sup>227</sup> This is the case whether people arrive in Australia with a valid visa or not. In accordance with its international obligations Australia should give all people seeking asylum the chance to prove that they are refugees.

Australian law requires that asylum seekers who have not been successful in their claims for refugee status and have no lawful basis for remaining in Australia be removed from the country as soon as practicable.<sup>228</sup>

### 3.8 What is Australia's policy on asylum seekers and refugees?

Under its Humanitarian Program, Australia accepts a certain number of people every year who are refugees or have special humanitarian needs.

The Humanitarian Program has two main components:

- **offshore resettlement** for people who are found to be refugees and others whose need for protection has been acknowledged *before* they come to Australia, and
- **onshore protection** for people who make a successful claim for asylum *after* they arrive in Australia.

Australia is the only country in the world to numerically link its system for granting asylum onshore and its scheme for resettling people from offshore under a single program. The effect of this link is that each time a person is granted refugee status within Australia, one place is subtracted from the offshore component. Other countries determine a particular number of refugees to be resettled each year, depending on global needs, and meet this commitment regardless of how many people seek asylum directly from the country.

Resettling people who have been found to be refugees overseas (offshore resettlement)

Refugees and other 'humanitarian entrants' who apply for a visa from outside Australia can be granted one of two kinds of visas.

- **Refugee Visas** can be granted to 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 home country or stay where they are.<sup>229</sup>
- **Special Humanitarian Program Visas** can be granted to people outside their home country who have experienced substantial discrimination amounting to a gross violation of their human rights in their home country. A proposer – who is an Australian citizen, Australian permanent resident, eligible New Zealand citizen or organisation based in Australia – must support an application for this visa.<sup>230</sup>

Protecting people who seek asylum from within Australia (onshore protection)

Some people can seek to be recognised as refugees when they are already in Australia by applying for a **Protection Visa**. Asylum seekers must satisfy the Refugee Convention definition of 'refugee' to be granted a Protection Visa.

Australia is obliged to protect a refugee if:

- the applicant has a well-founded fear of persecution on at least one of the grounds covered by the Refugee Convention
- the applicant has not committed war crimes or serious non-political crimes
- the applicant does not have effective protection in another country (through citizenship or some other right to enter and remain safely in that country).

A Protection Visa allows a refugee to live in Australia as a permanent resident. It gives people the same rights as other permanent residents, including being able to apply for citizenship.<sup>231</sup>

### 3.9 How many refugees come to Australia and where do they come from?

In 2010–11, 13 799 visas were granted under Australia’s Humanitarian Program. This includes 8971 visas granted to people under the offshore resettlement program and 4828 visas granted to people who were found to be refugees after they arrived in Australia (onshore protection).<sup>232</sup>

The top ten countries of nationality for people granted offshore visas in 2010–11 were: Iraq, Burma, Afghanistan, Bhutan, the Democratic Republic of Congo, Ethiopia, Sri Lanka, Iran, Sudan and Somalia.<sup>233</sup>

In 2010–11, the top ten countries of nationality for people granted onshore visas who arrived other than by boat were: Iran, the People’s Republic of China, Pakistan, Zimbabwe, Egypt, Sri Lanka, Iraq, Fiji, Lebanon and Afghanistan.<sup>234</sup> The top five nationalities of people granted onshore visas who arrived by boat in 2010–11 were Afghanistan, Iran, no country of nationality (stateless), Iraq and Sri Lanka.<sup>235</sup>

The table below shows the number of visas granted under Australia’s Humanitarian Program over the past six years.

#### Find out more

Australia’s Refugee and Humanitarian Program; Fact Sheet 60, Department of Immigration and Citizenship (2011)

### 3.10 How many asylum seekers come to Australia and where do they come from?

In 2010–11, 11 491 asylum seekers sought protection from within Australia.<sup>237</sup> The number of people seeking protection in Australia each year has fluctuated widely over the past decade, with peaks in 1999–2001 and again in recent years. The lowest numbers in the past decade were in 2004–05.<sup>238</sup>

In 2010–11 the total figure included 6316 applications lodged by asylum seekers who entered Australia by air, who almost always arrived on a valid visa,<sup>239</sup> and then applied for a Protection Visa.<sup>240</sup> The number of people seeking protection after arriving by air has been steadily rising since 2004–05.<sup>241</sup> In 2010–11 the top ten countries of citizenship of people seeking asylum after arriving by air were China, India, Pakistan, Egypt, Iran, Fiji, Nepal, Iraq, Malaysia and Indonesia.<sup>242</sup>

A further 5175 requests were made in 2010–11 by unauthorised arrivals who came to Australia by boat without a valid visa.<sup>243</sup> The top five countries of citizenship for this group were Afghanistan, Iran, no country of citizenship (stateless), Iraq and Sri Lanka.<sup>244</sup> Approximately 31 per cent were from Afghanistan (compared to 58 per cent in 2009–10), and 30 per cent were from Iran (compared to 4 per cent in 2009–10), while the number of applications by stateless people almost doubled since 2009–10.<sup>245</sup>

Table 3.1: Visas granted under Australia’s Humanitarian Program by category<sup>236</sup>

Category	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11
Refugee (offshore)	5511	6022	6003	6004	6499	6003	5998
Special Humanitarian (offshore)	6585	6736	5183	4795	4511	3233	2973
Onshore	1065	1372	1793	2 131	2492	4534	4828
Temporary Humanitarian Concern	17	14	38	84	5	–	–
<b>Total</b>	<b>13 178</b>	<b>14 144</b>	<b>13 017</b>	<b>13 014</b>	<b>13 507</b>	<b>13 770</b>	<b>13 799</b>

### 3.11 What happens to asylum seekers in Australia?

The way in which asylum seekers' claims for protection are processed will vary depending on whether they had a valid visa at the time they arrived in Australia.

Asylum seekers who enter Australia on a valid visa

'**Authorised arrivals**' enter Australia with a valid visa, such as a tourist visa or a student visa, and then apply for a Protection Visa. Claims for asylum made by 'authorised arrivals' are processed through the refugee status determination system established by the *Migration Act 1958* (Cth) (the Migration Act).

An 'authorised arrival' who applies for a Protection Visa may receive a bridging visa, which allows him or her to stay lawfully in the community while his or her application is being processed. Whether an applicant for a Protection Visa is allowed to work will depend on a number of factors, including his or her immigration status at the time the application was made.

Applications for Protection Visas must be made in writing to the **Department of Immigration and Citizenship** (the Department). An officer from the Department, who has been delegated power by the **Minister for Immigration and Citizenship** (the Minister), assesses the person's application and decides if he or she satisfies the requirements set out in Australian law and the Refugee Convention. The Department aims to process applications for Protection Visas within a 90-day timeframe.<sup>246</sup>

In addition to an assessment of their refugee status, people who seek asylum in Australia are subject to health, character and security checks. Those found to be refugees and who pass these checks are granted Protection Visas and can remain in the Australian community as permanent residents.

A person who arrives in Australia on a valid visa and whose application for protection is refused can seek an independent review by the Refugee Review Tribunal or the Administrative Appeals Tribunal. An applicant who receives a negative outcome from either of these tribunals may apply for a review of the tribunal's decision by a court. However, an appeal will only be allowed if it can be shown that the tribunal has made an error of law.<sup>247</sup>

Asylum seekers who enter Australia without a valid visa

People who arrive in Australia without a valid visa are called '**unauthorised arrivals**'. There are many reasons why people travel without documentation. For example, a person who is fleeing persecution by the government of their country of origin might not be able to obtain a passport from officials in that country. Alternatively, a person fleeing persecution might travel without documentation to avoid being identified as they leave their country of origin and reduce the risk to themselves and their family.

Until late 2011, 'unauthorised arrivals' had different experiences of claiming asylum depending on how and where a person arrived in Australia.

Previously, people who arrived in Australia by boat, also known as 'irregular maritime arrivals', and sought asylum were barred from accessing the refugee status determination process that applies on the Australian mainland. This is because most of the islands that surround Australia have been 'excised', or removed, from Australia's migration zone. The claims of asylum seekers who arrived by boat at an 'excised offshore place' were instead processed through a separate refugee status determination system. These people were also subject to a separate system of independent merits review of negative decisions to that available to other asylum seekers in Australia. Additionally, in practice most asylum seekers who arrived in Australia by boat without a valid visa and then sought asylum were held in immigration detention for the entire period it took for their claims for asylum to be finalised.

On the other hand, 'unauthorised arrivals' who came to Australia by plane underwent the same refugee status determination system as 'authorised arrivals'. That is, they applied in writing to the Department; had their application assessed by a delegate of the Minister; underwent health, character and security checks; and could apply to the Refugee Review Tribunal or Administrative Appeals Tribunal for a review of negative decisions.<sup>248</sup> This is because 'unauthorised arrivals' by plane will arrive on the mainland rather than on one of the islands 'excised' from the migration zone. In practice, while some asylum seekers who arrived in Australia by plane without a valid visa may have spent a period of time in immigration detention, many of them were granted bridging visas permitting them to live in the community while their claims for asylum were processed.

In October 2011, the Australian Government announced that Australia would return to a policy of using a single system for processing the asylum claims of ‘unauthorised arrivals’ who arrive by plane and those who arrive by boat.<sup>249</sup> These new streamlined arrangements commenced on 24 March 2012.<sup>250</sup> ‘Unauthorised arrivals’ by boat are now subject to the same refugee status determination system that is prescribed by the Migration Act and is available on the mainland. These people are also permitted to apply directly for a Protection Visa and have the same opportunities to appeal from a negative decision in the Refugee Review Tribunal or Administrative Appeals Tribunal as other people claiming asylum from within Australia.<sup>251</sup>

Also in October 2011, the Australian Government announced that following initial health, security and identity checks, selected ‘irregular maritime arrivals’ who are not considered to pose risks to the community would be placed into the community while their asylum claims are assessed, through community detention and the use of bridging visas.<sup>252</sup> On 25 November 2011 an initial 27 asylum seekers who arrived by boat were approved for bridging visas, and since then, many more people have been granted bridging visas under this approach.<sup>253</sup> Statistics on the number of people released from immigration detention on bridging visas are published regularly by the Department.<sup>254</sup>

These announcements bring Australia’s treatment of asylum seekers arriving in the country by boat into line with its processes for other people seeking asylum.

## Find out more

Seeking Protection within Australia; Fact Sheet 61, Department of Immigration and Citizenship (2011)

Onshore Processing Arrangements for Irregular Maritime Arrivals; Fact Sheet 65, Department of Immigration and Citizenship (2011)

Australia’s Excised Offshore Places; Fact Sheet 81, Department of Immigration and Citizenship (2011)

The Health Requirement; Fact Sheet 22, Department of Immigration and Citizenship (2010)

The Character Requirement; Fact Sheet 79, Department of Immigration and Citizenship (2011)

## 3.12 What is immigration detention?

Australian law requires that people on the mainland found to be ‘unlawful non-citizens’ be detained until they are granted a visa or removed from the country.<sup>255</sup> ‘Unlawful non-citizens’ include asylum seekers; recognised refugees who have not satisfied the health, character or security requirements for the grant of a visa; people who have overstayed their visas and non-citizens whose visas have been cancelled.

The law also provides that ‘unlawful non-citizens’ who arrive at an ‘excised offshore place’, such as Christmas Island, *may* be detained.<sup>256</sup> However, the Australian Government’s current policy is to mandatorily detain all asylum seekers who arrive at excised offshore places for the management of health, identity and security risks to the community.<sup>257</sup>

The UNHCR has urged countries to avoid detaining asylum seekers.<sup>258</sup> Australia’s policy of mandatory immigration detention has attracted specific criticism from the UNHCR and other United Nations bodies.<sup>259</sup>

### How are people detained in immigration detention?

People in immigration detention can be detained in a number of ways. They may be held in immigration detention centres; confined to immigration residential housing; confined to immigration transit accommodation; held in alternative places of detention; or subject to community detention.

Australian law does not set out standards for conditions or treatment of people in immigration detention.

What are immigration detention centres?

Immigration detention centres are the most widely used form of immigration detention in Australia. These are the most secure of Australia’s immigration detention facilities and people detained in them are not free to come and go.

In May 2012, immigration detention centres were located at Maribyrnong (Melbourne), at Villawood (Sydney), in Perth, in Darwin, near Derby in Western Australia, near Weipa in northern Queensland, on Christmas Island, at Wickham Point near Darwin and in Pontville, Tasmania.

The Australian Government has announced plans to open a new immigration detention centre at Yongah Hill in Northam, Western Australia.



External fences, Northern Immigration Detention Centre, near Darwin (September 2010)



External fence, Blaxland compound, Villawood Immigration Detention Centre (February 2011)



Dormitory, Curtin Immigration Detention Centre (May 2011)



Dormitory, Blaxland compound, Villawood Immigration Detention Centre (February 2011)



Accommodation, Sydney Immigration Residential Housing (February 2011)



Bedroom, Sydney Immigration Residential Housing (February 2011)

### What is immigration residential housing?

Immigration residential housing facilities are closed detention facilities with less intrusive security measures than immigration detention centres. Immigration residential housing is often provided to family groups and unaccompanied children seeking asylum in Australia. People detained in immigration residential housing live in more flexible, less institutional settings and can, for instance, prepare their own meals. They may also be able to leave for short periods, under the supervision of officers from the detention services provider, for shopping or recreation.

In May 2012, immigration residential housing facilities were located in Sydney, Perth and Port Augusta in South Australia.

### What is immigration transit accommodation?

Immigration transit accommodation facilities are closed detention facilities but have less intrusive security measures than immigration detention centres. They were originally intended to provide hostel-style accommodation for low-risk people in short-term immigration detention. However, more recently they have been used for much longer periods to detain families and unaccompanied minors who have arrived by boat. In May 2012, immigration transit accommodation facilities were located in Brisbane, Melbourne and Adelaide.

### What are alternative places of detention?

In certain circumstances, asylum seekers may be held in alternative places of immigration detention, such as correctional centres, hospitals, hotels, psychiatric facilities, foster care arrangements or with a designated person at a private residence.

The conditions and restrictions that apply to these people will depend on where they are held and what arrangements have been made for their supervision by a designated person.



Offices and accommodation, Darwin Airport Lodge (September 2010)

There are also a number of low security immigration detention facilities that are classified by the Department as alternative places of detention. These include the Construction Camp on Christmas Island and facilities in Darwin, Leonora in Western Australia and Inverbrackie in South Australia. People detained in these facilities are supervised and are not free to come and go.



External view, Berrimah House, Darwin (September 2010)



Volleyball court, Leonora immigration detention facility (November 2010)

### What is community detention?

Some people in immigration detention are allowed to live in specified residences in the community.

Community detention was introduced in 2005 when the Migration Act was amended to allow the Minister to make **residence determinations**. People in community detention are generally not under supervision and can move freely about in the community. Legally, however, they remain in immigration detention.

Certain conditions and requirements attach to residence determinations, such as reporting regularly to the Department, sleeping at a specified residence every night and not engaging in paid work or formal study.

### Find out more

Immigration Detention; Fact Sheet 82, Department of Immigration and Citizenship (2011)

Immigration Residential Housing; Fact Sheet 83, Department of Immigration and Citizenship (2011)

Residence Determination; Fact Sheet 83a, Department of Immigration and Citizenship (2009)

### 3.13 Who is in immigration detention?

How many people are in immigration detention?

As at 30 April 2012, there were 5967 people in immigration detention, including 5166 people on mainland Australia and 801 people on Christmas Island. Of the people detained on the mainland at this date, 1638 were in community detention.<sup>260</sup>

Statistics on the number of people in immigration detention are published regularly by the Department.<sup>261</sup>

How many children are in immigration detention?

As at 30 April 2012, 1019 children were in immigration detention: 861 were detained on mainland Australia and 158 were in detention on Christmas Island. Of the children detained on the mainland at this date, 556 were in community detention.<sup>262</sup>

As a matter of Australian Government policy, children are not held in Australia's high-security immigration detention centres. However, children are detained in other types of immigration detention facilities, including immigration residential housing, immigration transit accommodation and alternative places of detention.<sup>263</sup>

Statistics on the number of children in immigration detention are published regularly by the Department.<sup>264</sup>

### 3.14 How long are people held in immigration detention?

Australian law and policy do not set a limit on the length of time a person can be held in immigration detention. An individual can be detained for anywhere from a few days to a few years, or even longer.

Of the 5967 people in immigration detention at 30 April 2012, 66% had been in detention for over three months and 34% had been detained for six months or longer. Almost 1500 people had been in detention for over a year and 382 people had been detained for over two years.<sup>265</sup>

Statistics on the length of time people have spent in immigration detention are published regularly by the Department.<sup>266</sup>

### 3.15 What happens to people who do not meet the definition of refugee but are in need of protection?

Some people may not meet the definition of a refugee in the Refugee Convention, but nevertheless need protection because they may experience significant human rights abuses if they return to their countries of origin. For example, a person may face torture or death upon return, but not for any of the reasons set out in the Refugee Convention.

The *International Covenant on Civil and Political Rights*, the *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment* and the *Convention on the Rights of the Child* all require that people who are at risk of death or serious human rights violations in their countries of origin not be returned to face such risks.<sup>267</sup> In line with their obligations under these treaties, some countries have 'complementary' or 'subsidiary' protection schemes. These schemes provide people who have not been found to be refugees, but cannot be returned, with a level of protection similar to 'Convention' refugees.<sup>268</sup>

Australia has recently introduced such a scheme of complementary protection. The *Migration Amendment (Complementary Protection) Act*, which became law in October 2011, allows people claiming protection under Australia's international human rights obligations to have their claims assessed through the same visa process as people seeking protection under the Refugee Convention.<sup>269</sup> The Department commenced processing claims under the complementary protection scheme on 24 March 2012.<sup>270</sup>

#### Find out more

Complementary Protection; Fact Sheet 61a, Department of Immigration and Citizenship (2011)

### 3.16 What assistance do asylum seekers receive in Australia?

Asylum seekers living in the community may be eligible for the **Asylum Seeker Assistance Scheme**. Under this scheme, people may be provided with some financial assistance, health care services and other services in limited circumstances.

People living in the community are eligible to receive help under the Asylum Seeker Assistance Scheme if they have been identified as vulnerable and are experiencing financial hardship. Their visa application must also be at a particular stage and/or they must meet certain exemption criteria. Eligibility for ongoing support is reviewed regularly.<sup>271</sup>

Alternatively, highly vulnerable asylum seekers with complex needs may be eligible for the **Community Assistance Support** program. People may receive assistance under this program if they have exceptional circumstances and vulnerabilities and have no access to other support or assistance in the community.

The Community Assistance Support Program helps asylum seekers to meet their basic health and welfare needs while their immigration status is being resolved. Assistance provided under the program may include complex casework support, access to health care and counselling and crisis accommodation.<sup>272</sup>

The Asylum Seeker Assistance Scheme and the Community Assistance Support program are funded

by the Department and administered by the Australian Red Cross. Under these schemes, people can access income support amounting to 89% of a Centrelink Special Benefit.<sup>273</sup>

Asylum seekers are not entitled to social security.

## Find out more

Assistance for Asylum Seekers in Australia; Fact Sheet 62, Department of Immigration and Citizenship (2011)

Community Assistance Support Program; Fact Sheet 64, Department of Immigration and Citizenship (2009)

### 3.17 What settlement services does Australia provide to refugees?

The Department provides a variety of resettlement services to help refugees adjust to life in Australia. The **Australian Cultural Orientation Program** is available to refugee and humanitarian visa holders who are preparing to travel to and settle in Australia. It aims to provide people with an overview of Australia before they arrive and covers topics such as: Australian politics; Australian geography and climate; cultural adjustment; travel to Australia; health care and education; finding a job; money management; housing; transport within Australia; and Australian law.<sup>274</sup>

The **Humanitarian Settlement Services** program assists humanitarian visa holders during their early settlement period in Australia. It aims to build their confidence and capacity to participate socially and economically in the community and give them the knowledge and skills to access services they will need in the future. The program is tailored to meet people's individual needs and may include on-arrival reception and induction, help with finding accommodation and referral to mainstream agencies and other settlement and community programs.<sup>275</sup>

The **Settlement Grants Program** funds community organisations to provide settlement support services to eligible refugees for up to five years after their arrival. It aims to assist refugees in practical ways so they can become self-reliant and participate equitably in Australian society as soon as possible after their arrival.<sup>276</sup>

Refugees may also receive:

- free English tuition under the **Adult Migrant English Program**<sup>277</sup>
- **Complex Case Support services**, if they face significant difficulties in successfully resettling; for instance, if they have experienced torture or trauma in their home countries, have a serious medical conditions or experience a crisis after arriving in Australia<sup>278</sup>
- assistance through **Centrelink services** such as the Languages, Literacy and Numeracy Program for jobseekers, the Assessment Subsidy for Overseas Trained Professionals and Centrelink multicultural services<sup>279</sup>
- a one-off payment from Centrelink for people in crisis situations.<sup>280</sup>

Refugees have the same entitlements to social security as all other Australian permanent residents and receive payments from Centrelink at the same rate as all other eligible Australians.<sup>281</sup> They are, however, exempt from some of the waiting periods that usually apply to applicants for social security payments.<sup>282</sup>

## Find out more

Humanitarian Settlement Services; Fact Sheet 66, Department of Immigration and Citizenship (2012)

The Australian Cultural Orientation (AUSCO) Program; Fact Sheet 67, Department of Immigration and Citizenship (2012)

Settlement Grants Program; Fact Sheet 92, Department of Immigration and Citizenship (2011)

Settlement Services for Refugees; Fact Sheet 98, Department of Immigration and Citizenship (2011)

### 3.18 What were Australian laws, policies and practices on refugees and asylum seekers like in the past?

Information about the 'Tampa' issue, the 'Pacific Solution', Temporary Protection Visas and other related matters can be found in the 2008 version of *Face the Facts*.<sup>283</sup>

## Endnotes

- 1 The Australian Human Rights Commission understands the importance of using appropriate terminology when referring to Aboriginal and Torres Strait Islander peoples. The Commission recognises there is strong support for the use of Aboriginal and Torres Strait Islander peoples, First Nations and First Peoples. The word 'peoples' recognises that Aborigines and Torres Strait Islanders have a collective, as well as an individual, dimension to their lives. This is affirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*. Accordingly, the term Aboriginal and Torres Strait Islander peoples is used throughout this publication.
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- there should be no more than two persons per bedroom
  - a household of one unattached individual may reasonably occupy a bed-sit (i.e. have no bedroom)
  - couples and parents should have a separate bedroom
  - children aged less than 5 years, of different sexes, may reasonably share a room
  - children aged 5 years or over, of different sexes, should not share a bedroom
  - children aged less than 18 years and of the same sex may reasonably share a bedroom, and
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- Further Information

**Australian Human Rights Commission**

Level 3, 175 Pitt Street  
SYDNEY NSW 2000

GPO Box 5218  
SYDNEY NSW 2001  
Telephone: (02) 9284 9600

Complaints Infoline: 1300 656 419  
General enquiries and publications: 1300 369 711  
TTY: 1800 620 241  
Fax: (02) 9284 9611  
Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

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