

Australia's Maltreatment Of Asylum Seekers And Refugees – Part I

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“When [Prime Minister] Howard was leading our country, staffers in one minister’s office called themselves the KKK. Used in relation to asylum seekers, it meant ‘Keep them out, Kick them out, or Keep them in detention’. I have heard this more than once from reliable sources and I have no doubt that it is true.”

Susan Metcalfe, author of *The Pacific Solution*

(Melbourne 2010), an activist who has worked for many years as an asylum seeker and refugee advocate.

Australia has ratified every possible, imaginable treaty and/or convention that any civilised country would want to be known to honour - and respected none of them in its maltreatment of asylum seekers and refugees.

It is correct that Australia does not generally agree to be bound by a treaty unless it is satisfied that its domestic laws comply with the terms of the treaty. Nevertheless, Australia considered itself bound by some basic instruments such as Art. 14 of the Universal Declaration of Human Rights - a declaration adopted by the United Nations General Assembly on 10 December 1948. The Declaration arose directly from the experience of the second world war and represents the first global expression of rights to which all human beings are inherently entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions

and laws. Art. 14 proclaims: “(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”

Together some of these treaties are referred to as the International Bill of Human Rights. Interestingly, Australia is the only one, among the Anglophone countries: Canada, New Zealand, the United Kingdom and the United States, not to have a Bill of Rights. According to the official view of the present political representatives of the two major parties, the Australian Labor Party - now in government, and the Coalition of the Liberal and National Parties, Australia does not need a Bill of Rights. The International Bill consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (I.C.C.P.R.) a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of March 2012 the Covenant had 74 signatories and 167 parties; and the International Covenant on Economic, Social and Cultural Rights (I.C.E.S.R.) a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976. It commits its parties to work towards the granting of economic, social, and cultural rights to individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. As of July 2011 the Covenant had 160 parties. The International Bill is completed by its two Optional Protocols. After the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law. Australia has ratified all of them.

Additionally, Australia has ratified a number of human rights instruments, including the following:

- [Convention on the Prevention and Punishment of the Crime of Genocide](#) (C.P.C.G.) (adopted 1948, entry into force: 1951)
- [Convention Relating to the Status of Refugees](#) (C.S.R.) (adopted 1951, entry into force: 1954)

- [Convention on the Elimination of All Forms of Racial Discrimination](#) (C.E.R.D.) (adopted 1965, entry into force: 1969)
- [Convention on the Elimination of All Forms of Discrimination Against Women](#) (C.E.D.A.W.) (entry into force: 1981)
- [Convention Against Torture](#) and Other Cruel, Inhuman and Degrading Treatment or Punishment (C.A.T.) (adopted 1984, entry into force: 1987)
- [Convention on the Rights of the Child](#) (C.R.C.) (adopted 1989, entry into force: 1990)
- [International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#) (I.C.R.M.W.) (adopted 1990, entry into force: 2003)
- [Convention on the Rights of Persons with Disabilities](#) (C.R.P.D.) (entry into force: 3 May 2008)
- [International Convention for the Protection of All Persons from Enforced Disappearance](#) (adopted 2006, entry into force: 2010).

While Australia has agreed to be bound by these major international human rights treaties, they do not form part of Australia's domestic law unless the treaties have been specifically incorporated into Australian law through legislation. Section 51(xxix) of the Australian Constitution, the 'external affairs' power, gives the Commonwealth Parliament the power to enact legislation which implements the terms of those international agreements to which Australia is a party. Some provisions of a treaty may however already exist in national legislation. For instance, many of the provisions contained in the Convention on the Rights of People with Disabilities are mirrored in Australian law through the *Disability Discrimination Act* 1992 (Cth).

This principle reflects the fact that agreeing to be bound by a treaty is the responsibility of the Executive in the exercise of its prerogative power, whereas law making is the responsibility of the Parliament.

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In Australia all 'unlawful non-citizens' must be detained and, unless they are granted permission to remain in the country - through the grant of a visa, they must be removed as soon as practicable. This mandatory detention policy was set into legislation with the support of the two major parties - Labor and Liberal + Agrarian Socialist - in 1992, and endorsed through a major parliamentary inquiry in 1994. Mandatory detention applies to visa 'over-stayers' as well as unauthorised arrivals. However people who arrive legally and overstay their visas and who apply for refugee or other visas can be given bridging visas. Unlike boat people, they are not held in detention for the duration of their refugee claims assessment.

The policy of mandatory detention in Australia - that is the legal requirement to detain all non-citizens without a valid visa - was introduced by the Keating (Labor) Government in 1992 in response to a wave of Indochinese boat arrivals.

Pursuant to the policy it is a requirement that 'unlawful non-citizens' - nationals from another country without a valid visa - in Australia's migration zone be detained, unless they have been afforded temporary lawful status through the grant of a bridging visa while they make arrangements to depart or apply for an alternative visa. Most are usually granted temporary lawful status in this manner, but if an 'unlawful non-citizen' is considered to be a flight or security risk, or refuses to leave Australia voluntarily, s/he may be refused a bridging visa and detained in preparation for her/his removal.

Until recently, all asylum seekers who arrived without authority by boat - referred to as 'irregular maritime arrivals' - were detained and usually transferred to Christmas Island while their reasons for being in Australia were identified. The policy is in the process of changing.

The main focus of Australia's mandatory detention policy is to ensure that:

- 1) people who arrive without lawful authority do not enter the Australian community until they have satisfactorily completed health, character and security checks and been granted a visa, and
- 2) those who do not have authority to be in Australia are available for removal from the country.

While Australia's detention population is comprised of irregular maritime arrivals, some visa over-stayers and certain other 'unlawful non-citizens', it is the often lengthy mandatory detention of asylum seekers who have arrived unauthorised by boat which attracts the bulk of the attention in the public debate.

Australia is still the only country where immigration detention is mandatory for all unlawful non-citizens - including asylum seekers.

Detention policy in Australia began to evolve in response to the arrival of the first wave of boats carrying people seeking asylum from the aftermath of the Vietnam war. Over half the Vietnamese population was displaced in those years and, while most fled to neighbouring Asian countries, some embarked on the voyage by boat to Australia. It is estimated that about 1.8 million people departed Vietnam in and after 1975 and it is probable that there were at least 3 million departures from the region over a twenty year period. In comparison, a relatively small number embarked by boat to Australia; the first wave of Indochinese boat arrivals from 1976 to 1981 included about 2,100. Between 28 November 1989 and 27 January 1994 eighteen boats arrived in a second wave carrying 735 people - predominantly Cambodian nationals.

The first wave of 'boat people' was initially received by the Australian public with sympathy; there was a general assumption that these arrivals were 'genuine' refugees and most were granted refugee status relatively quickly. However, continuing arrivals became a matter of increasing concern with what would generously be referred to as 'public discussion' soon focusing on such issues as rising unemployment and the impact of people 'jumping the immigration queue'. 'Respecting the queue' is one of the few fundamental tenets of 'Australian way of life'. The other is 'playing the game' - an almost untranslatable expression which has something to do with cricket, at the essence of life ! Of course, the foundation elements of that life could be listed under 's': sun, sand, surf, sports and soldiering - a lot of it, as it becomes self-designated inheritors of the glorious British past. Such 's' are generously distributed under the exclusive word of 'mateship'. The concept (?) is inexplicable other than to say that it describes a communion shared by men only - *sheilas* (women) cannot partake of it. Spiritual poverty, a sense of illegitimacy of tenure because of the original invasion and subsequent devastation of the Indigenous People, self-inflicted ignorance, and a limited but strongly authoritarian view of life have from the beginning of the penal colony established a complex attitude to 'the other' which vacillates from an intense

dislike of 'different people' to an open, often mutating, but never abandoned prejudice against classes of people. That explains the substantially racist nature of the place and the occasional xenophobic explosions.

In the late 1970s three Australian facilities could be described as immigration detention centres, in Melbourne, Perth and Sydney. However, all were designed to detain short term compliance cases - such as visa over-stayers - and only the infrastructure in Sydney was considered adequate to accommodate the new arrivals. The initial detention centres would soon be transformed in veritable concentration camps - barbed wire and all. At the beginning, most of the Indochinese asylum seekers arriving from 1976 to 1981 were housed in Sydney's *Westbridge* Migrant Centre - now called *Villawood* - together with other refugees and humanitarian arrivals.

The initial wave of boat people comprised 56 boats from Vietnam carrying about 2,100 people. The first arrived in Northern Australia in April 1976 and the last in August 1981. There were few concerns within the Government or the Department of Immigration about the 'bona fides' of these boat people; they were fleeing a regime with which Australia had been at war for some ten year. They were 'processed' - the bureaucracy's favourite word! - for permanent residence immediately on arrival. These mainly Vietnamese boat people were held in 'loose detention' in an open part of *Westbridge*, together with migrants who had been granted visas under the humanitarian and refugee programmes. They were not allowed to leave the Centre during 'processing' and had to report for rollcall daily.

These initial difficulties led to the enactment of the *Migration Legislation Amendment Act* 1989, which introduced changes to the system of 'processing' boat arrivals and allowed officers to arrest and detain anyone suspected of being an 'illegal entrant'. Detention was still discretionary and not mandatory until 1992, but the changes made in 1989 effectively introduced a policy of 'administrative detention' for all people entering Australia without a valid visa, or any others unlawfully present in the country, while their immigration status was resolved.

The second wave of boat people was held in detention in *Villawood* - which was still unfenced.

The next wave of boat people, mainly from Cambodia, began to arrive in Australia from 28 November 1989. Passengers on the first of these boats were held for a period of three weeks

at a holding centre near Broome, in northern Western Australia, ordinarily used for illegal fishermen awaiting trial. They were subsequently moved to *Westbridge*. As in the case of the earlier Vietnamese boat people, they were detained in an unfenced area, but were not permitted to leave the centre and had to report daily to the Australian Protective Service.

However, most of the detainees of the second wave were not 'processed' quickly and - for good measure - all remained in custody for the entire period of their refugee determination process. Between November 1989 and January 1994, eighteen boats arrived carrying mostly Cambodians, Chinese and Vietnamese nationals, with one third remaining in detention until the end of this period - some of whom were in custody for over four years.

In response to this second wave of boat arrivals the Port Hedland Immigration Reception and Processing Centre opened in 1991 in order to accommodate some of the - mostly Cambodian - asylum seekers. The removal of asylum seekers to this relatively isolated centre on the site of a disused mining camp in north-west Western Australia attracted criticism from the Refugee Council of Australia amongst others.

As a result of the enactment of the *Migration Legislation Amendment Act 1989*, numbers of immigration detainees began slowly to increase by leaps and bounds. For example, on 1 January 1985 only five people were being held in immigration detention centres but, by June 1992 - after the second wave of Indochinese boats had begun to arrive - there were 478 people in immigration detention of whom 421 had arrived by boat.

In 1989 the average length of stay in immigration detention was 15.5 days, but for the Cambodian asylum seekers who arrived by boat in 1989, the average length of stay - until a primary decision was made on refugee status - proved to be 523 days.

While the main factor contributing to the increased use of immigration detention was the arrival of several boats carrying Indochinese asylum seekers fleeing the region in the aftermath of the Vietnam war, there were also 'unlawful non-citizens' who had arrived in the country originally by air. This was partly due to the fact that in the 1980s and 1990s there was pressure on the Australian Government to address concerns over the number of 'undocumented migrants' or visa over-stayers in the community - a sizeable number of 90,000 in 1990. The 1990 Joint Standing Committee on Migration Regulations report noted the issues of public concern. The control of 'unlawful non-citizens' had taken on a new

urgency because the problem was coupled with or compounded by fears of an increased movement of asylum seekers. The two issues were to be seen as different, but the presence of unlawful entrants had come, whether correctly or not, to symbolise the inability of governments to control their borders, and in Australia's case, to protect the integrity of its immigration programme.

Fear has dominated the life of the country from the very beginning. 'Border control' became an obsession and an easy electoral appeal.

So it was in 1992 that the policy of mandatory detention was introduced by the Keating (Labor) Government, with the support of the Opposition, through the enactment of the *Migration Amendment Act 1992*. Mandatory detention was initially envisaged as a temporary and 'exceptional' measure to deal with a particular class of 'designated persons' - Indochinese unauthorised boat arrivals. In his second reading speech, the Labor Minister for Immigration stated quite firmly the Government's determination *that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community*. [Emphasis added, and the words became a battle-cry for both sides of Her Majesty's Government in Australia !] Nevertheless, it was said that the legislation was only intended to be an interim measure, a proposal which was directed 'principally to a detention regime for a specific class of persons', and that, as such, it was 'designed to address only the pressing requirements of the current situation'.

Detention of unlawful arrivals has not changed in twenty years !

Mandatory detention was subsequently extended to all 'unlawful non-citizens' with the enactment of the *Migration Reform Act 1992*, which came into effect on 1 September 1994. The Act established a new visa system making a simple distinction between a 'lawful' and 'unlawful' non-citizen. Under Section 13 of the Act, a migration officer had a duty to detain any person suspected of being unlawful. Quite importantly, the Act removed the 273 day detention limit which had applied under the *Migration Amendment Act 1992*. Mandatory detention became indefinite under the law. Over-stayers could apply for a bridging visa which allowed them to stay in the community while their claims were assessed. The Act had the support of the Coalition Opposition.

In an acknowledgement of the high costs of mandatory detention, and by way of discouraging further 'unlawful arrivals' the Act also introduced detention charges - called detention

debts - whereby an 'unlawful non-citizen' was liable for the costs of her or his immigration detention.

In his second reading speech Minister Hand provided the Government's rationale for some of the amendments. He proposed "a range of measures to enhance the Government's control of people who wish to cross our borders. The Bill sets out more effective means of regulating entry, detention and removal of people who do not establish an entitlement to be in Australia. ... Unlawful non-citizens who satisfy prescribed criteria will be able to acquire lawful status and release from detention by the grant of a bridging visa. Bridging visas will not be available to people who arrive in Australia without authority.[meaning by that: boat people] Depending on their circumstances, they will be immediately removed from Australia or will be subject to detention until any claim they wish to make has been resolved. When a person who is in Australia unlawfully has exhausted all available application and merits review entitlements, the law will require that person to be removed as soon as practicable."

The Minister made it quite clear: the Government did not intend to detain people indefinitely and, initially, a time limit was given.

Still, it is beyond comprehension that the Minister could say without blushing that: "*Australia will, of course, continue to honour its statutory and international obligations as it always has done.*" [Emphasis added] Or that he went on declaring that: "Any claims made by these people will be fully and fairly considered under the available processes, and any persons found to qualify for Australia's protection will be allowed to enter. Until the process is complete, however, Australia cannot afford to allow unauthorised boat arrivals to simply move into the community."

Here was the Minister, reassuring Parliament that: "The Government has no wish to keep people in custody indefinitely and I could not expect the Parliament to support such a suggestion. Honourable members will note that the amendment calls for custody for a limited period. The period provided for in the amendment is 273 days - this translates into nine months."

In fact, however, as already noted, the 273 day time limit was subsequently removed by the *Migration Reform Act 1992* and, with indefinite detention permitted under Australian law, many instances of prolonged detention have occurred over the years.

Successive governments have argued the need to ‘retain mandatory detention to support the integrity of Australia’s immigration programme’ and ‘ensure the effective control and management of Australia’s borders’. As a result, while many changes and reforms have been introduced by both sides of politics since the 1990s, Australia’s mandatory detention policy essentially remains unchanged.

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Since the 1990s the detention of asylum seekers in often remote locations has received a great deal of public attention - and, by and large, approval. Only for a small minority, the duration and conditions of detention have been controversial issues; yet they have plagued successive governments beginning in the early 1990s when there were several hunger strikes, rooftop demonstrations and suicide attempts at *Villawood* and Port Hedland.

It is possible to establish a degree of continuity between the 1992 provisions and those put forward by the Howard Government’s Minister for Immigration, Philip Ruddock ten years later. Successive governments and other supporters of Australia’s mandatory detention policy have claimed that it is an ‘integral part of the highly developed visa and border controls’ necessary to maintain the integrity of Australia’s much vaunted ‘world class migration and refugee resettlement programmes’. Defenders of the policy of mandatory detention have furthermore been successful in attributing to the victims the causes of their prolonged detention: they came to be blamed for their actions and determination to remain in a more prosperous country. Detainees - mostly those who had escaped one form or another of persecution - have always been ‘free to leave at any time’, and cynically invited to “Go back where they came from”.

Late in 2011 the Minister for Immigration of the Gillard Government announced a change in policy whereby ‘eligible boat arrivals who do not pose risks will be progressively considered for community placement on bridging visas while their asylum claims are assessed’, but most ‘unlawful arrivals’ continued to be mandatorily detained ostensibly for the purpose of health, security and identity checks.

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The numbers of Indochinese boat arrivals between 1976 and 1994 were relatively small - just over 2,760 people. However, between 1999 and 2001 Australia received a new wave of approximately 9,500 unauthorised boat arrivals seeking asylum - predominantly from the Middle East. In response, the Howard Government introduced a range of measures designed to discourage further boat arrivals and reduce the number of people in detention.

The issue of providing additional and appropriate accommodation to avoid overcrowding and a deterioration of conditions was a significant challenge for the Howard Government with the surge in boat arrivals in the late 1990s and is proving to be the case again for the Labor Government following a surge in arrivals since 2008.

In October 1999 the Howard Government introduced temporary protection visas enabling the release into the community of many detainees who had been granted refugee status. However, protection and therefore residency in Australia, was only provided on a temporary basis. The Government maintained that the introduction of this type of visa would remove the incentives for asylum seekers who were considering making the journey to Australia by boat.

While this measure had the potential significantly to reduce the number of people in detention, it was criticised by many for only providing protection for a limited period of time - three years initially; for not allowing refugees to sponsor family members under the family reunion programme - with the result that more family groups began to arrive by boat; and for not affording access to the full range of government services provided to refugees with permanent visas.

The conditions in detention centres, prolonged detention and the physical and psychological effects on detainees on Nauru and in onshore detention facilities, particularly Woomera, attracted a great deal of criticism of the Howard Government by human rights organisations. The Government remained impervious. In 2000 there were a number of incidents of self-harm, riots and protests in Woomera where 500 people staged a mass escape, followed by riots and unrest at Port Hedland and Curtin detention centres.

With the rapid increase of asylum seekers arriving by boat in 1999-2000, the rate of processing slowed again and by the end of December 2000, of the 2,023 people in detention, 18 per cent had already been detained for a year or more.

On 26 August 2001 the Howard Government refused permission for the Norwegian freighter MV *Tampa*, carrying 438 rescued refugees, predominantly *Hazaras* of Afghanistan from a distressed fishing vessel in international waters, to enter Australian waters.

Hazara people live predominantly, but not exclusively, in the central highland region of Afghanistan. For more than two centuries they have been persecuted, through systematic discrimination, ethnic cleansing and genocide. Many *Hazaras* have been forced to hide their identities and to surrender their lands to Pashtun tribes. Since 1995 *Hazara* people have also been the victims of massacres by Taliban. The situation might have improved relatively in Afghanistan with the ousting of Taliban from power in 2001, but hundreds of *Hazaras* have been victimised in Quetta, Pakistan, in recent years.

When the *Tampa* entered Australian waters, the Prime Minister ordered the ship be boarded by Australian special forces. The action of the Howard Government triggered an Australian political controversy in the lead up to a federal election, and a diplomatic dispute between Australia and Norway. The boarding brought censure from the Norwegian Government which took the view that the Australian Government failed to meet obligations to distressed mariners under international law.

The asylum seekers were subsequently transferred to H.M.A.S. *Manoora* and taken to the Pacific island of Nauru.

On 29 August 2001 the Australia Government introduced the *Border Protection Bill 2001* into the House of Representatives. The Bill would confirm Australian sovereignty ‘to determine who will enter and reside in Australia.’

Once approved the Act would give the Government the power to use reasonable force to remove any ship from Australian territorial waters; forcibly to return any person to such a ship; and to guarantee that no asylum application may be made by anyone on board.

The purpose of the Act was to make the Government’s actions against the MV *Tampa* legal and to allow Australia to refuse entry to asylum seekers. It was part of a ‘package’ of new laws which, in relation to asylum seekers, excised island territories from Australia.

The Government introduced the so-called ‘Pacific Solution’, whereby the asylum seekers were to be taken to Nauru where their refugee status was to be considered, rather than in Australia.

Nauru, officially the Republic of Nauru and formerly known as Pleasant Island, is an island country in Micronesia in the South Pacific. Its nearest neighbour is Banaba Island in Kiribati, 300 kilometres to the east. Nauru is the world’s smallest republic, covering just 21 square kilometres - 8.1 square miles. With 9,378 residents, it is the second least-populated country after Vatican City.

Nauru is a phosphate rock island which had rich deposits near the surface, once allowing easy strip mining operations. It still has some phosphate reserves, which are now not economically viable for extraction. After the phosphate reserves were exhausted, and the environment had been seriously harmed by mining, to earn income, Nauru briefly became a tax haven and illegal money laundering centre. Between 2001 and 2008 it accepted ‘aid’ from the Howard Government in exchange for housing the Nauru detention centre. The ‘spiritual’ inheritors of the original invaders of Gondwanaland had turned into new ‘colonisers’ for the purpose of building a gaol - for many ‘transported’ refugees an improvised mental asylum.

On 10 September 2001 a statement of principles was signed by President of Nauru, René Harris, and the then Australian Minister for Defence, Peter Reith, providing for a detention centre for up to 800 people. The Australian Government pledged \$20 million for development activities in Nauru. The initial intake included the asylum seekers rescued by the MV *Tampa*. The International Organisation for Migration was contracted to run the detention centre and, in turn, it subcontracted to firms such as Chubb Security.

On 19 September 2001 the ‘border protection package’ became law after some insignificant amendments by Labor. The Australian Greens and the Australian Democrats opposed the ‘Pacific Solution’ and all mandatory detention. With the support of the Labor Opposition the Parliament had passed the *Migration Amendment (Excision from Migration Zone) Bill 2001* and the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bills 2001*, giving effect to a policy of offshore processing which came to be known as the ‘Pacific Solution’.

Under the 'Pacific Solution', Christmas Island, Ashmore and Cartier Islands and the Cocos (Keeling) Islands were excised from Australia's migration zone, meaning that non-citizens arriving unlawfully - without valid documentation - at one of these territories were not able to make a valid application for a visa to Australia, including protection visas, unless the bar on the visa application process was lifted at the discretion of the Minister.

From then on, unauthorised arrivals at excised places were transferred to Offshore Processing Centres which were established on Manus Island of Papua New Guinea' Manus Island, with an area of 2,100 kilometres - 810 square miles, situated some 1,700 kilometres from the nearest Australian International Airport in Cairns, and Nauru, which is some 3,000 kilometres from the same airport. There they would remain while their asylum claims were processed. Persons who were found to be owed protection were eventually resettled either in Australia or in a third country, *with the emphasis on trying to find resettlement solutions in a third country in preference to Australia*. Some asylum seekers were also processed on the excised offshore territory of Christmas Island. Asylum seekers processed offshore under the 'Pacific Solution' did not have access to legal assistance or judicial review of negative decisions.

On 7 October 2001 SIEV 4 - the acronym standing for [Suspected Illegal Entry Vessel](#) is used by the surveillance authority for any boat which has entered Australian waters without prior authorisation and the 4 is a designation where a tracking number has not or is yet to be assigned, in accordance with Australian Government orders - a fishing boat carrying 223 asylum seekers was intercepted by Australian Navy ship H.M.A.S. *Adelaide* north of Christmas Island.

The federal election was announced.

On 8 October 2001 Immigration Minister Philip Ruddock announced that passengers on SIEV 4 had threatened to throw children overboard. This claim was repeated by other government ministers including Prime Minister Howard and Defence Minister Reith. The claim was later shown to be false. But 'it would work' on a credulous, indifferent electorate.

On 10 October 2001 H.M.A.S. *Adelaide's* commander reported to his superiors that no children were thrown into the water.

On 19 October 2001 SIEV X sank in international waters but inside Australia's surveillance zone while en route from Indonesia; 353 people, including 146 children, died in the water.

On 21 October 2001, following agreement with the Papua and New Guinea Government, a detention centre was opened on Manus Island.

In a later interview with the Edmund Rice Centre, based in New South Wales, an Iraqi survivor removed from the *Tampa* to Australian Navy boat *Manoora* revealed the conditions under which she and others were taken to Nauru: “We refused to land in Nauru and were kept on the boat for one month in a room large enough for 100 and we were 350. We could not breathe; there was not enough room and the toilet facilities were terrible, terrible.”

The Howard Government took full advantage of the opportunity caused by the *Tampa* affair. On 28 October 2001, at the election campaign policy launch speech, Mr. Howard uttered the catchiest of all slogans to appeal to Australian chauvinism: “ ... we will decide who comes to this country and the circumstances in which they come.”

In early November 2001 Dr. John Pace, former secretary to the U.N. Commission on Human Rights and Chief of Branch Office of the High Commissioner for Human Rights, visited Nauru and reported back to Amnesty International that asylum seekers showed “symptoms of post-traumatic stress disorder, including nervousness, anxiety, an aggressive attitude, muteness, distrust, withdrawal, and lack of focus and concentration.” These symptoms affected their participation in the eligibility process. Dr. Pace found that detainees were housed in corrugated iron huts, plastic sheeting and shade cloth, with dirt floors; and that the huts were infested with mosquitoes and with little protection from heat. Conditions were harsh. While there were basic health facilities, there was insufficient psychological care.

On 8 November 2001 Prime Minister Howard addressed the National Press Club, again claiming that asylum seekers threw children into the water.

On 10 November 2001 Mr. Howard won the election. It was widely agreed that his ‘border protection policy’ had played a significant role in the campaign and that Labor had been wedged into supporting the policy. The Coalition was credited for having a strong leadership, while Labor would lose support to the Australian Greens and Australian Democrats.

On 11 December 2001 a further agreement was signed with Nauru, boosting refugee numbers to 1,200 with an additional \$10 million promised. Two camps were opened: one at an old sports ground and oval and another at Nauru’s old presidential quarters.

The detainees later told the [British Broadcasting Corporation](#) that they were initially told they would only be on the island for a few weeks while their claims were processed.

On 8 January 2002 the United Nations High Commissioner for Refugees stated that the agency expected most of those sent to Nauru would be found to be refugees. Immigration Minister Philip Ruddock said that it was wrong to make predictions.

Labor meanwhile was reported to be softening its attitude towards mandatory detention and the ‘Pacific Solution’.

A journalist with *The Sydney Morning Herald*, posing as a tourist to obtain access to Manus Island, reported suicide attempts, breakouts and hunger strikes by asylum seekers, as well as widespread, potentially fatal diseases, including malaria, typhoid fever and tuberculosis.

Early in February 2002 Immigration Minister Ruddock and Opposition counterpart Julia Gillard M.P. visited Manus Island and Nauru. Journalists were refused seats on the plane to Nauru. When they tried to travel on commercial flights, the Nauruan Government refused them visas. Detainees on Nauru, including children, protested; they were chanting “freedom, freedom”.

Interviewed by a journalist of the Australian Broadcasting Corporation television on her return about centre conditions, Ms. Gillard commented: “The conditions are not what you or I would aspire to, but I do understand that by the conditions of refugee centres around the world, that they are, you know, adequate conditions, not bad conditions.”

On 13 February 2002 the Senate established a Select Committee into *A Certain maritime incident (Children overboard affair)*, which included an inquiry into the ‘Pacific Solution’ and its operation and cost.

On 22 March 2002, in a submission to the Select Committee, Australian Lawyers for Human Rights argued that the ‘Pacific Solution’ was incompatible with Australia’s obligations under international law, that its operation lacked transparency and that it provided insufficient access to refugees. Journalists insisted that Non-government organisations and the Human Rights and Equal Opportunity Commission should be allowed access to the centres.

On 17 April 2002 an A.B.C. reporter for the programme *Foreign Correspondent* broadcast secretly filmed footage of Manus detention centre and conducted an interview with a senior [Papua and New Guinea politician](#) who said the P.N.G. Government was “strongarmed” into opening the centre.

There were now 1,155 people detained in Nauru including 30 children.

In May 2002 the Australia Government announced that the 2002-2003 Budget would “focus on removing some of the ‘push factors’ from source countries,” with \$5.8 million provided over three years in assistance for Afghan asylum seekers who volunteered to return to Afghanistan.

In June 2002 Refugee activist Ms. Kate Durham and founder of Spare Rooms for Refugees entered Nauru ‘undercover’ with a B.B.C. journalist and obtained the first images. “The conditions were disgusting, absolutely and utterly disgusting.” Ms. Durham was quoted as saying. “I walked around a shanty city ... it felt terrible; it was hot, it was airless, it was sickeningly disease-ridden.”

A Catholic priest visited the island and reported that Australians “will look back on this policy of the Pacific Solution with shame and regret. We will recognise it for what it is: a xenophobic fear-ridden reaction, well served by obscene political opportunism in keeping with the now discredited White Australia Policy.”

On 22 September 2002 a B.B.C. highly critical report was broadcast in the United Kingdom.

On 23 October 2002 the majority report of the Senate Inquiry into *A certain maritime incident* was tabled by its Chairman, Labor Senator Peter Cook. The report found that the Minister for Defence, Peter Reith deliberately misled the public in the *children overboard affair*. The Committee found that the ‘Pacific Solution’ had projected a negative image of Australia in the region.

Although the Committee did not find the ‘Pacific Solution’ to be in breach of the Convention relating to the Status of Refugees, it noted concerns in relation to the International Convention against Torture and the Convention on the Rights of the Child, particularly in relation to people being held in detention after they have been found to be refugees. It was concerned about the lack of transparency in the application process. Less than 400 of the

Tampa refugees had been resettled, and 81 people had not been given a decision. Hundreds found to be refugees had been refused entry to Australia and remained in detention indefinitely, which is a breach of Arts. 26 and 31(2) of the Refugee Convention. Australia was still responsible for finding a solution for these people.

The Liberal senators on the Committee dissented, condemning the report as an undignified sideshow.

On 4 December 2002 Labor announced its new policy, which was opposed to the detention in Nauru or Papua New Guinea, but supported excising Christmas Island and turning back boats. Labor M.P. Dr. Carmen Lawrence quit the shadow front bench in protest against the harshness of the policy. The Australian Greens and Australian Democrats continued to oppose the Christmas Island proposal as well as the 'Pacific Solution'.

On 13 December 2002 approximately 230 asylum seekers agreed to return to Afghanistan but on arrival some waved placards complaining about Nauru detention conditions. A young man aged 19 spoke to an Australian newspaper and said that he had left Afghanistan fearing for his life under the former Taliban regime. "Then armed people came and forced us to go to Nauru where we were kept in prison conditions for one and a half years. These people say they obey human rights, but the way they treat people, it is clear they do not... Conditions were terrible in the camp, there was not enough food or water." Others told researchers of the Edmund Rice Centre that they were told by **United Nations** translators and the [International Organisation for Migration](#) staff that they must return to Afghanistan because it is Australia's policy to send refugees back.

On 16 December 2002 a United Nations working group inquiry into Australia's detention centres, including Nauru, criticised the length of incarceration, the treatment of children and the lack of access to legal advice for asylum seekers. The report recommended detention be limited to a specific period after which asylum seekers are released, providing a person guarantees their behaviour. It said that detention conditions had caused problems such as hunger strikes, night terrors, bed wetting and, in serious cases, self-mutilation and suicide attempts. The Australian Government accused the U.N. group of making errors in the report.

On 20 December 2002, according to a report titled *Soldiers, sailors and asylum seekers*, co-authored by human rights lawyer Julian Burnside, Q.C., asylum seekers on Nauru and Christmas Island were being tortured and treated in an inhuman, cruel and degrading way. "...[I]f the government is not prepared to investigate these claims seriously, I would take that as an admission that they're true." Burnside wrote. He called for a Senate or judicial inquiry. Labor M.P. Dr. Carmen Lawrence launched the report, saying: "[T]hese are circumstances where people are held indefinitely, in many cases without hope, and without any review of their conditions. ...lack of hope and the brutality, both physical and psychological, produces devastating consequences on human beings."

On 24 December 2002 a 'riot' occurred at the Nauru detention centre. Later this was reported to have been started by women who were on temporary protection visas in Australia, and had been separated from their husbands and denied refugee status.

On 27 December 2002 a 'stand-off' occurred between officials and detainees on Manus Island, where there were 100 detainees.

On 17 January 2003, 150 refugees from Manus Island and Nauru were accepted by New Zealand; some were from the *Tampa*.

On 29 January 2003 Australia's Special Broadcasting Service's *Dateline* and *The Sydney Morning Herald* reported that, following the 24 December protest, asylum seekers on Nauru complained that they had no running water and were living on one meal a day. There were allegations that children were threatening suicide. In the *Dateline* programme, a Nauruan policeman alleged that Australian Protective Service officers left food and water at the front gate. Guards and asylum seekers had thrown rocks at each other during the protest. The Australian Protective Service said that it had no evidence to support the claims.

Asked about the situation on Nauru, a spokesman for the Immigration Minister, Philip Ruddock, said that "logic was sadly lacking in [asylum seekers] saying 'we want full services, but we will threaten you if you come in and try to provide it'."

On 7 August 2003 the Australian Democrats' Leader, Senator Andrew Bartlett, visited Nauru. He said he was shocked at the conditions. "The policy seems to be aimed at grinding down the will of the detainees until they give up and go home." he said. "So many children,

young children, three, four, five years old, gathered at the gate, all of them kept in camps since 2001. The inescapable question arises again. How can this be that the Australian taxpayer funds the deliberate imprisonment of children ?” he subsequently wrote.

On 26 August 2003 Nauru banned lawyers, human rights activists, health care professionals and independent observers. Amnesty International issued a global alert about the deteriorating human rights situation on Nauru.

On 11 December 2003 there were 284 people in detention on Nauru including 93 children. Nine detainees, four of whom sew their lips together, started a hunger strike. More joined the protest during the following week.

On 12 December 2003 nine hunger strikers were reported to be slipping in and out of consciousness after three days without water. The hunger strikers told supporters that if they died, there were more who would take their place. “This peaceful protest will go on. We have no choice left. There is freedom or death.” they said in an email.

On 13 December 2003 the A.B.C. reported that more detainees had joined the hunger strike. The Australia Government said that, if detainees did not agree to return to Afghanistan voluntarily, it could deport them. “These people should be under no illusions that by taking these actions they will influence the Australian Government to provide them with entry to Australia.” an Immigration Department spokesman said.

On 14 December 2003 *A Just Australia* complained that no media had legally challenged the refusal of the Nauruan and Australian Governments to allow journalists to do first hand reporting on the ‘Pacific Solution’. S.B.S. *Dateline* was the only team to have got in. It exhorted the media to hold the government accountable: “Independent monitoring of the plight of these people has not occurred. There are no pictures in the newspapers or on TV, no stories of the effect of this stalemate on the children on Nauru.”

On 15 December 2003 seven hunger strikers were hospitalised.

The Australian Greens called for offshore detention centres to be closed immediately. “[Nauru] is a despairing camp more akin to a penal colony in Australia 200 years ago than to the sort of Australia we respect ourselves for running in the year 2003 ... Growing fears of

serious injuries to those in detention in Nauru, or even fatalities, cannot go unheard.” Greens Leader Bob Brown said.

Labor said that “Nauru should be closed as soon as possible... The ‘Pacific Solution’ should end, and the best way for that to happen is for the government to stand up today and say ‘Yes, we will end Nauru...’ ” shadow minister for immigration Stephen Smith said, complaining that the Government was not keeping him informed about the situation. He called for mediators to be sent in.

The (Melbourne) *Age* newspaper reported that the dire situation on Nauru exposed the failure of the Government to appoint an independent watchdog of the ‘Pacific Solution’. The Human Rights Commission should be allowed to oversight Nauru. *The Age* criticised the government for rejecting the [U.N.H.R.C.](#)’s advice that it is not safe to return asylum seekers to Afghanistan. Some refused applications should be reconsidered.

On 16 December 2003 almost 300 asylum seekers detained on Nauru launched legal action against the Australian Government, claiming they were being falsely imprisoned. Melbourne solicitor Eric Vadarlis said that some asylum seekers being held on the island were near death. “I must say that if these people die then I think Mr. Howard will have blood on his hands.” Vadarlis said. As the strikers entered their seventh day, Rural Australians for Refugees spokeswoman Elaine Smith warned someone would die soon. Strikers were reported to be urinating blood. Stephen Smith said the situation warranted bringing in the federal Immigration Detention Advisory Group to negotiate an end to the strike.

On 17 December 2003 Immigration Minister Senator Amanda Vanstone said that hunger strikers were not the Government’s problem. “It’s not in Australian territory, it’s on Nauru, and being run by other people. If someone doesn’t want to be there, they can go home. Nobody likes to see people who are feeling that they have to take what appear to be drastic measures in order to protest, but people will do what they want to do.”

On behalf of Nauru detainees, human rights lawyers sought a court declaration that they were being held illegally. Julian Burnside, Q.C. accused the Government of trying to force the detainees back to Iraq and Afghanistan. “Some prefer the conditions on Nauru [that amount to] a slow death rather than a more rapid death if they go back.” he said. The lawyer

for the Australian Government argued that the asylum seekers were under the jurisdiction of Nauru and not Australia.

On 18 December the [International Organisation for Migration](#) claimed that refugees were involving children in the strike and Prime Minister Howard ordered an investigation.

On 19 December 2003 Australian Catholic bishops asked the federal government immediately to bring all asylum seekers on Nauru to Australia: “We call on the Australian Government to recognise the complementary protection needs of those Afghans on Nauru who are from districts that are not yet safe...”

On 19 December 2003 the United Nations High Commissioner for Refugees said that it was concerned for “hundreds of people - mostly Afghans and Iraqis and including more than 90 children - who continue to be detained on the isolated Pacific Island of Nauru, some of them for more than two years.”

It said that those who did not qualify as refugees, but could not for security reasons be transferred to their countries of origin, should be treated humanely while a solution was found which would not involve continued detention in harsh conditions. U.N.H.C.R. described the hunger strike as “symptomatic of a general degree of despair that must be addressed with a view to responding humanely to what is becoming a human tragedy.”

On 20 December 2003 the Australian Government finally responded to the hunger strike by announcing that former Immigration Minister, John Hodges and Afghan community leader Ghulam Aboos would visit the island.

On 22 December 2003 Afghanistan’s Ambassador to Australia, Mahmoud Saikai expressed disagreement with the Australian Government over the plight of failed asylum seekers in Nauru, urging them to be brought to Australia. “We need time and Australia could help us by, somehow, if our nationals were allowed to remain in Australia; that would have been helpful to us.” he said.

On 24 December 2003 New Zealand, which had already taken 131 *Tampa* asylum seekers, was considering accepting some of remaining 284 asylum seekers on Nauru. There were now 41 hunger strikers.

The United Nations High Commissioner for Refugees said that it began reviewing 46 detainees' claims several months before, given the deterioration of the situation in Afghanistan. It urged Australia to do the same for all Afghans on Nauru who had been refused refugee status.

On 27 December 2003 *A Just Australia* put forward a proposal by which hunger strikers would end their strike if Australian and New Zealand Governments agreed to meet on Nauru in the new year to negotiate a solution drafted by the *Hazara* ethnic society. Immigration Minister Amanda Vanstone criticised the proposal for giving strikers "false hope".

On 29 December 2003 the Australian Council of Trade Unions president Sharan Burrow and Howard Glenn, *A Just Australia* director, wrote to the New Zealand Prime Minister Helen Clark urging her to intervene in the strike. "We know that this is an unfair request, but we are desperate to save these lives." they wrote.

At the end of 2003, 35 asylum seekers, 18 of whom were in hospital, remained on hunger strike on Nauru. The Howard Government was taking a hard line. Labor's Immigration spokesperson Stephen Smith urged the government to approach New Zealand which was reported to be prepared to take more asylum seekers.

On 1 January 2004 the Immigration Department finally took action. It distributed a letter to the detainees, saying it would reassess Afghan applications after it received an update from the United Nations on security in Afghanistan.

On 3 January 2004 the hunger strikers wrote to the Australian Government saying they would end the protest if they were assured that their claims would be reviewed fairly using an interpreter of their trust. U.N.H.C.R. said that it expected that some claimants, who were initially refused, would be recognised as refugees.

On 8 January 2004, after receiving assurance that their cases would be reviewed, the hunger strikers ended their protest.

On 11 January 2004 child psychiatrist Dr. Louise Newman said she was particularly concerned about the damaging effect of detention on babies and young children. She described it as a form of child abuse.

On 14 January 2004 the Australian Government admitted that the Nauru detention centre was hurting the tiny nation's health system and agreed to increase resources.

On 15 January 2004 the Brotherhood of St. Lawrence welcomed the end of the strike but said that Australia must find a better solution than Nauru for asylum seekers.

The Australian Government argued in the Victorian Supreme Court that the actions of Australian personnel were valid because the Nauruan Government was detaining asylum seekers on Nauru, not the Australian Government. When on Nauru - the government claimed - Australian officers would become local Nauruan police subject to Nauruan law. Julian Burnside, Q.C., acting for the detainees, rejected this argument.

On 20 January 2004 the Victorian Supreme Court ruled that the legal bid to free the detainees on Nauru could proceed.

On 4 February 2004 *A Just Australia* reported that 93 children were still on Nauru.

On 25 February 2004, after review by the U.N. High Commissioner for Refugees, nearly half the remaining 22 *Tampa* asylum seekers on Nauru were recognised as refugees. A U.N.H.C.R. spokeswoman said that the cases of 13 other Afghans were still being considered. *A Just Australia* welcomed the decision but said that it was a tragedy that the Afghans were forced to wait thirty months for the decision.

On 1 June 2004, after a court challenge to his detention, the last detainee on Manus Island, Palestinian Aladdin Sisalem, was granted an Australian visa.

On 10 June 2004 more than 80 children remained in detention on Nauru.

The Australian Human Rights Commission published *A last resort? The national inquiry into children in immigration detention*. It disagreed with the Government's decision not to allow it to visit Nauru or **Papua New Guinea** and was particularly concerned that children found to be refugees were still detained. This increased the likelihood of **Art. 37(b)** of the Convention for the Rights of Children - to the effect that any child should be detained only as a last resort and for the shortest possible appropriate time - being breached.

By 2005 31 per cent of detainees had been held for one year or more and in 2007 there were 367 people who had been in detention for two years or more.

Between 2001 and February 2008, when the 'Pacific Solution' was formally brought to an end by the Rudd (Labor) Government, a total of 1,637 people had been detained in the Nauru and Manus facilities. 1,153 of them (70 per cent) were found to be refugees and ultimately resettled in another country. The majority of these 1,153 refugees (61 per cent) were resettled in Australia with the remainder resettled in other countries such as New Zealand, Sweden, Canada and the United States of America.

While the 'Pacific Solution' reduced the numbers of those who would otherwise have been detained onshore - by 1,637 people, it was widely but in vain criticised by refugee advocacy and human rights groups as being contrary to international refugee law, psychologically damaging for detainees, and unjustifiably expensive to implement. In addition, there was a great deal of criticism at the time of conditions in onshore immigration detention centres such as Baxter, Curtin and Woomera - leading to widespread unrest and riots.

While mandatory detention remained a cornerstone of the Howard Government's attempts to deter asylum seekers arriving by boat, some softening of the policy was introduced in 2005 by the then Minister for Immigration, Philip Ruddock, through a residential housing project for women and children and community detention arrangements.

On 25 March 2005, under intense pressure, the Australian Government softened its stance on detainees held in Australia, but nothing changed for the 54 asylum seekers on Nauru. "They're just feeling desperately alone, cut off, traumatised and depressed." Ms. Susan Metcalfe, a University of New England researcher, told *The (Melbourne) Age*. "They're in a camp comprised totally of other depressed people. They have nowhere to turn."

On 18 April 2005 United Nations official Neil Wright urged Australia to find a humanitarian solution for 54 asylum seekers on Nauru, most of whom had been detained for more than three years. Most of those remaining had been denied refugee status but refused to return to their home countries of Iraq or Afghanistan.

On 18 May 2005 refugee advocates condemned a secret deal between Australia and Afghanistan which allowed Afghan asylum seekers held in immigration detention to be

forcibly deported to their homeland. Refugee Action Coalition spokesman Ian Rintoul said that the idea that Afghanistan was safe for asylum seekers was ridiculous. “After persecution in their homeland, Afghans have been persecuted by the Australian Government ... They have tried everything except showing compassion and providing permanent protection to these refugees. The government is using them as a political football.”

On 30 May 2005 the Australian Government confirmed that nine asylum seekers who had been on Nauru for three years would be allowed to settle in Australia but stated that this was not a softening of government policy.

On 22 June 2005 the last children in Nauru were given permission to settle with their families in Australia on temporary protection visas.

On 31 August 2005 the case of *Hazaran* Mahammad Ruhani, who originally applied for a Nauruan court order that he was being illegally detained, was before the High Court of Australia. By now Ruhani has been given permission to settle in Australia. In a 4-1 decision, the Court upheld the main thrust of the ‘Pacific Solution’ and found that, although it was not a party to the Refugee Convention, Nauru could validly detain asylum seekers on Australia’s behalf by issuing special visas under its own immigration law which restricts asylum seekers to detention centres on the island. The then High Court judge Michael Kirby disagreed, finding that applying immigration laws to deprive asylum seekers, taken to Nauru against their will, of their liberty was unlawful. “There may be other similar arrangements in the history of population movements of recent times. However, if any exist like the present case, I do not know of them and none were suggested to this Court.” Following this decision, the earlier proceedings launched in January 2004 were not pursued.

On 22 September 2005 refugee advocates claimed that 27 detainees on Nauru were suffering from depression and at least one was under constant surveillance following an attempt to harm himself. Shadow immigration minister Tony Burke said that they should all be moved to Australia so they could receive appropriate health care.

On 14 October 2005 Prime Minister Howard said that all but two of remaining detainees on Nauru would be brought to Australia. Half of these detainees would be allowed to settle in Australia, the rest would be further detained in Australia. He proclaimed ‘Pacific Solution’ an

“outstanding success” and that the centres would be kept open. Labor said this move was an admission that the policy had failed. Keeping the centres open would cost \$36 million a year.

On 13 April 2006 a decision by the Australian Government to grant asylum to 42 West Papuans arriving by boat was criticised by the Indonesian Government as demonstrating double standards. Immigration Minister Amanda Vanstone announced an extension to the ‘Pacific Solution’ by which any people arriving by boat would be shipped to Nauru, Manus Island or Christmas Island, where they would stay until their visa applications had been processed and a place found for them overseas. Amnesty International and other refugee advocate groups called the policy a “breach of Australia’s obligations under the International Refugee Convention.”

On 15 April 2006 Mr. David Manne, co-ordinator of the Refugee and Immigration Legal Centre told A.B.C. radio that “If people are dragged off to Nauru, they’ll be subject to a system of fundamental unfairness where they’ll completely be denied access to due legal processes in Australia.”

On 29 September 2006 the Edmund Rice Centre published its report *Deported to danger, a study of Australia’s treatment of 40 rejected asylum seekers*. It was an inquiry into cases of people found not to be refugees who were returned to countries of origin. The inquiry found that authorities took a reckless view of the dangers and discrimination faced by people in countries to which they returned. The report documented the perils they faced including living in fear of being arrested, imprisoned, tortured or killed.

Four Afghans returned from Nauru told stories of depression, physical and psychiatric illness, isolation and frustration at the flawed translations of U.N.H.C.R. One reported that when they asked for a lawyer, U.N.H.C.R. staff said that “In Nauru you do not have that facility. If you were in Australian camp then you could demand for it.” The Afghans also complained of subtle threats from the guards about injections for those unwilling to go back, the appalling physical conditions and the heat endured for extended periods without sufficient clean water, electricity or air conditioning.

One man explained why he decided to leave “voluntarily” even though he expected to face danger: “This detention centre is a hell-hole. There was a lot of persecution by [Australian Correctional Management]. I felt I had no hope of freedom ever and I felt I would never see

my wife and children again. I was very depressed. I was afraid I would lose my mind if I stayed any longer. I felt it was better to lose my life trying to reach my family than to lose my life in that detention centre.”

On 1 November 2006 Ms. Susan Metcalfe returned from two months on Nauru and reported that since a new Nauruan Government was elected, two remaining detainees could move around the island during the day but the main problem was now the length of detention. The men had been held for more than four and a half years to determine whether they were ‘genuine’ refugees, but the Australian Government has decided that they must be settled elsewhere because they had not passed secret security tests.

On 6 December 2006 Mohammed Sagar, the last remaining Iraqi refugee on Nauru, was accepted by Sweden.

In 2006 the Howard Government funded researchers at the University of Wollongong to study the long-term effects of immigration detention on those detained. Published in 2010, the study would show that asylum seekers suffered more serious physical and mental health problems than those detained for a shorter length of time and for different reasons such as visa over-stayers waiting to depart the country.

On 27 January 2007 the costs of Nauru, where the two men remained, had blown out to \$1 million a day.

On 1 February 2007 Greens Senator Kerry Nettle called for the immediate closure of Nauru.

On 11 March 2007 Muhammad Faisal, one of the two men who had been on Nauru for five years, told *The (Melbourne) Age* that his life was a living hell. He was suffering from high anxiety and poor vision, was taking medication three times a day, and recently, in an act of desperation, had tried to take his life and was moved to a hospital in Australia.

On 10 May 2007 *The (Melbourne) Age* published an interview with Mohammed Sagar who now lives in Sweden. “I felt that my soul and my body are two different things.” he said. “Other feelings were also surrounding the space. Wonders of what my new life would look like, proud of defeating a government that failed to make others believe its lies, sad for the psychological damage due to the prolonged oppression, and many other bitter feelings.”

In Papua New Guinea the last inmate on Manus Island was Aladdin Sisalem, who was kept as a lone inmate from July 2003 until he was granted asylum in Australia in June 2004.

On 4 September 2007 *Oxfam* and *A Just Australia* released a report, *A price too high: Australia's approach to asylum seekers*, which found that the 'Pacific Solution' had cost the Australian taxpayer more than \$1 billion over five years and more than \$500,000 per person processed, seven times more than on the mainland. It had also failed to reduce the number of people arriving.

Amnesty International reported that, given that Australia funded detention on Nauru, detainees should have been entitled to the same level of respect for their human rights as Australians. It expressed concerns about lack of access to lawyers, friends, family and religious clergy.

In November 2007 Australia sent 83 Sri Lankan asylum seekers intercepted on the way from Indonesia to Nauru. "We are committed to sending the strongest possible message of deterrence to people who would engage in the dangerous and unlawful activity of people smuggling." said Immigration Minister Kevin Andrews.

Prior to the 2007 federal election, the Australian Labor Party resolved to implement significant changes to asylum and immigration detention policy if elected, including a commitment to end the 'Pacific Solution', while still retaining the excision of Christmas Island, Ashmore and Cartier Islands, and the Cocos (Keeling) Islands; to give permanent, not temporary, protection to all refugees; to limit the detention of asylum seekers for the purposes of conducting initial health, identity and security checks; to subject the length and conditions of detention to review; to return management of detention centres to the public sector - the Howard Government had privatised the operation of detention centres in 1997; and to set up a new Refugee Determination Tribunal.

On 24 November 2007 the Labor Party won the federal election and Mr. Kevin Rudd was sworn in as Prime Minister on 3 December 2007. On forming Government, Labor made some significant changes in immigration detention policy, giving effect to many, but not all, of the commitments made during the election campaign.

On 8 December 2007 eighty one Burmese and Sri Lankan refugees held on Nauru would be allowed to settle in Australia. Sixteen recent Indonesian boat arrivals would be repatriated to home island of Roti.

A new Government in Nauru said that it was worried about the loss of funds for its economy if the scheme was discontinued.

On 8 February 2008 the 'Pacific Solution' was formally ended, as the last 21 asylum seekers held at the Offshore Processing Centre in Nauru were resettled in Australia. The Government announced that the centres on Manus and Nauru would no longer be used, and that future unauthorised boat arrivals would be processed on Christmas Island, which would remain excised from Australia's migration zone. Of more than 1,200 detainees, most have been found to be refugees, often after three years in detention. Some of those who returned to their countries still claimed they were refugees.

Mr. David Manne, co-ordinator of the Refugee and Immigration Legal Centre, welcomed the closure but said that there were three waves of anguish: the first is trauma which forces people to become refugees, the second is the period in detention and the third are the debilitating nightmares and anxiety attacks being experienced by some after detention.

In May 2008 Labor began to expand facilities on Christmas Island.

The Minister for Immigration and Citizenship, Senator Chris Evans, described the Pacific Solution as a "cynical, costly and ultimately unsuccessful exercise." U.N. High Commission for Refugees, Richard Towles welcomed the end of the policy. "Many bona fide refugees caught by the policy spent long periods of isolation, mental hardship and uncertainty - and prolonged separation from their families." he said.

On 29 July 2008 the Minister for Immigration Senator Chris Evans announced in a speech to the Centre for International and Public Law at the Australian National University, an overhaul of the policy of mandatory detention, guided by seven 'key immigration detention values' as endorsed by Cabinet:

- 1) Mandatory detention was to be retained an essential guarantee of strong border control.

- 2) For the purpose, and with a view to supporting the integrity of Australia's immigration programme, three groups would still be subject to mandatory detention: 1) all unauthorised arrivals, for management of health, identity and security risks to the community; 2) 'unlawful non-citizens' who present unacceptable risks to the community; and 3) 'unlawful non-citizens' who have repeatedly refused to comply with their visa conditions.
- 3) Children, including juvenile foreign fishers and, where possible, their families, would no longer be detained in an immigration detention centre.
- 4) Detention which is indefinite or otherwise arbitrary would no longer be acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
- 5) Detention in immigration detention centres was to be used as a last resort and for the shortest practicable time.
- 6) People in detention were to be treated fairly and reasonably within the law, and
- 7) Conditions of detention would ensure the inherent dignity of the human person.

The new policy dictated that people would be detained as a 'last resort', rather than as standard practice. Unauthorised arrivals would be detained on arrival for identity, health and security checks, but once these had been completed the onus would be on the Department of Immigration to justify why a person should continue to be detained. Ongoing detention would be justified for people considered to pose a security risk or those who did not comply with their visa conditions. It was assumed that the majority of people would be released into the community while their immigration status was resolved.

Changes were also announced to the processing of unauthorised arrivals at excised offshore places. Those arriving unauthorised at an excised place would be processed on Christmas Island, where asylum seekers would undergo a non-statutory refugee status assessment process, but they would have access to publicly funded advice and representation. They would also be able to access a review process for negative asylum decisions - although not through the Refugee Review Tribunal - and would be subject to external scrutiny by the Immigration Ombudsman. This was a change from the system under the previous Government, where unauthorised arrivals at excised places had no access to independent

review or external scrutiny, but it still did not afford such people the same rights as those who arrived and were processed onshore - with access to merits or judicial review through the Refugee Review Tribunal and the Courts.

On 27 October 2008 the Edmund Rice Centre reported that at least nine Afghan asylum seekers had been killed in Afghanistan after being rejected by Australia. Director Phil Glendinning released a documentary in which he tracked a number of rejected asylum seekers and found that three children had died.

Despite the change in policy rhetoric, long-term mandatory detention continued under both the Rudd and Gillard Governments. As at 31 October 2011, 39 per cent of the detention population had been 'inside' for more than 12 months.

The increase in boat arrivals during 2009 and 2010 placed significant pressure on immigration detention facilities. The Rudd Government responded to this pressure by expanding the immigration detention network: \$202.0 million over five years - including \$183.3 million in capital funding, and \$18.7 million in related expenses - were allocated in the 2010-2011 Budget to ensure appropriate accommodation for asylum seekers. The measure provided for funding of \$143.8 million for increased capacity at immigration detention facilities. The measure also provided capital funding for a number of upgrades and enhancements to essential amenities and security at existing facilities, consisting of \$22.0 million for Christmas Island, \$15.0 million for the Northern Immigration Detention Centre in Darwin, \$1.5 million for *Villawood* in Sydney and \$1.0 million to upgrade existing residential facilities for unaccompanied minors at Port Augusta, South Australia.

One of the key changes to detention policy made by the Rudd Government was the removal of the statutory requirement that asylum seekers be liable for the cost of their detention - detention debt, a policy which had been introduced in 1992 with the aim of minimising the significant cost to government of holding people in immigration detention. The Rudd Government argued that the policy was ineffective because recovering debts had proved to be extremely difficult; the level of debt recovery over the years averaged around four per cent. On 8 September 2009 Parliament passed the *Migration Amendment (Abolishing Detention Debt) Bill 2009* which amended the *Migration Act* to remove this requirement. The Act also had the effect of extinguishing all immigration detention debts outstanding at the time of commencement.

However, in response to a new wave of asylum seekers arriving by boat in 2009 and 2010, the Rudd Government began to introduce changes to its policies. On 9 April 2010, citing changed circumstances in Afghanistan and Sri Lanka, the Rudd Government announced that it would suspend the processing of new asylum claims from Sri Lankan nationals for three months and from Afghan nationals for a period of six months. Those affected by the suspension would remain indefinitely in immigration detention until the suspensions were lifted - as it occurred, in July 2010 for Sri Lankans and September 2010 for Afghans.

On 30 March 2010 the Leader of the Opposition, Tony Abbott vowed to restart the 'Pacific Solution' policy and returned to John Howard's border protection rhetoric. "The problem is that under Mr. Rudd we do not decide who comes to our country and the circumstances under which they come." Mr. Abbott told reporters. "Under Mr. Howard we did."

The Rudd Government's temporary suspension in April 2010 of the processing of asylum seekers from Sri Lanka and Afghanistan arriving by boat was criticised on the basis that it might lead to their indefinite detention and would contribute to over-crowding and processing delays in the future.

On 24 June 2010 Mr. Kevin Rudd was replaced as Prime Minister by Ms. Julia Gillard.

In July 2010, following the change in leadership, the Labor Government under Prime Minister Julia Gillard continued in its efforts to reduce the number of people in immigration detention and deal with the problem of overcrowding - both on the mainland and on Christmas Island. In particular, the Gillard Government continued to expand the detention network in order to ease the problem of overcrowding on Christmas Island. In addition Ms. Gillard announced the Government would be moving towards establishing a regional processing centre, possibly in East Timor - although negotiations for the 'Timor Solution' subsequently collapsed.

Since 2010 overcrowding has placed extreme pressure on infrastructure and the detention network generally and the Department of Immigration and Citizenship has struggled adequately to house the various different groups of detainees. The Gillard Government subsequently lifted the suspensions, but over-crowding, delays in processing, and recent protests, rioting and incidents of self harm in both onshore and offshore detention centres attracted further attention and criticism.

Following the re-election of the Gillard Government, on 17 September 2010 the newly appointed Minister for Immigration and Citizenship, Chris Bowen, announced that additional immigration detainee accommodation would be prepared for families and unaccompanied minors in Melbourne, and for single adult men in northern Queensland and in Western Australia - through an expansion of capacity at the Curtin Detention Centre which had been reopened earlier in the year. Over the following months new facilities were also announced for Inverbrackie in South Australia, Wickham Point in Darwin and Pontville in Tasmania.

Like the Howard Government before it, the Gillard Government came under increasing pressure to move children from detention centres, as had been promised in Labor's 'detention values'. On 18 October 2010 the Prime Minister and the Minister for Immigration and Citizenship announced that the Australian Government would expand its existing residence determination programme and begin moving children and vulnerable family groups out of immigration detention facilities and into community-based accommodation.

With pressure on the detention network continuing to increase, the Gillard Government announced several significant policy changes and initiatives in 2011.

On 5 March 2011 the last two Iraqis to be detained on Nauru applied to the Federal Court to have access to their security assessments. The court upheld the right of Australia's security agency A.S.I.O. to keep assessments secret. Mohammed Sagar is now living in Sweden. Muhammad Faisal lives in Australia. A.S.I.O. has by now withdrawn its negative assessment of him.

On 27 April 2011, in response to increasing unrest in immigration detention centres, the Minister for Immigration and Citizenship announced that he would introduce amendments to the *Migration Act*, including a new provision to strengthen the 'character test'. Under the proposed changes a person would fail the 'character test' should s/he be convicted of any offence committed while in immigration detention would be prevented from applying for a permanent protection visa. On 5 July 2011 the amendments were enacted by Parliament.

On 6 May 2011, despite human rights and development group opposition, Prime Minister Gillard indicated that she wanted to reopen Manus Island. Opposition Leader Tony Abbott

urged the government “to send a message” to people smugglers by reopening Nauru, that he says his shadow minister Scott Morrison has visited and found to be in good condition.

On 7 May 2011, in an attempt to discourage boat arrivals and people smuggling, the Government announced that Malaysia had agreed to a transfer of 800 unauthorised boat arrivals in exchange for 4,000 refugees to Australia over four years. This proposal came to be known in the public debate as the ‘Malaysia Solution’.

On 2 June 2011 the Government agreed to a new select committee inquiry into mandatory detention to inquire into Australia's Immigration Detention Network, ‘including its management, resourcing, potential expansion, possible alternative solutions, the Government's detention values, and the effect of detention on detainees’.

On 9 June 2011 Liberal Senator Simon Birmingham told *Sky News* that the detention centre on Nauru had been “overseen and approved” by the U.N.H.C.R., and the Nauruan Government continued to claim that the centre operated “under the auspices of U.N.H.C.R.” A [U.N.H.C.R.](#) spokesman said “UNHCR was not involved and, indeed, distanced itself from any role in overseeing or managing the processing facilities on Nauru under the Pacific Solution. Recent media reports that the centre on Nauru was approved by and run under the auspices of the UN are factually incorrect.” It describes the policy as “deeply problematic”.

On 29 July 2011 the Australian Commonwealth Ombudsman announced that his office would initiate an investigation into suicide and self-harm in Australian immigration detention facilities in response to growing concerns about the impact of long-term detention on the ongoing mental health of detainees. Numerous other interested parties, including many mental health professionals, supported the Ombudsman’s inquiry and also expressed their growing concerns about prolonged detention in immigration detention centres and the effects it may be having on detainees.

On 19 August 2011 the governments of Australia and Papua New Guinea signed a Memorandum of Understanding towards the proposed establishment of an ‘assessment centre’ on Manus Island.

On 19 September 2011, after the High Court had ruled against the ‘Malaysia Solution’ on 31 August 2011, casting doubt on the legality of offshore processing entirely, the Government

released the proposed *Migration Legislation Amendment (Offshore Processing and Other Measures) Bill* 2011. The Bill was introduced to the House of Representatives on 22 September 2011, but was not pursued when it became clear that it was unlikely to be passed by Parliament.

On 13 October 2011 the Gillard Government stated that in addition to the expanded use of community detention it would extend the practice of issuing bridging visas to onshore asylum seekers - air arrivals - to include some of those who arrived irregularly by boat. It was proposed that these individuals would then be released from detention into the community while their asylum applications were processed 'as part of the suite of measures to respond to pressures on the immigration detention network'. It would appear that 'as part of the new approach to asylum seeker management' some of the asylum seekers to be released under this arrangement will include long-term detainees who will 'live in the community on bridging visas while their asylum claims are completed and their status is resolved'. On 25 November 2011 the Immigration Minister would announce that the first group of long-term detainees were to be released under these arrangements.

As at 31 October 2011, 39 per cent of the detention population had been 'inside' for more than 12 months. On that day, a delegation of refugee advocates, led by the Refugee Council of Australia, briefed parliamentarians on best-practice community-based models to process asylum seekers and committed to supporting detention alternatives: "Our message to the Government is clear - we are ready to work with the Government to build community support for successful community processing models."

On 29 November 2011 the Government released an independent report commissioned by the Minister for Immigration and Citizenship to review incidents of unrest at the Christmas Island and *Villawood* detention centres earlier in 2011. The report noted the stress that the detention network had been placed under by the recent surge in boat arrivals. In the case of Christmas Island, the report found that "the immigration detention infrastructure was not able to cope with either the number or the varying risk profiles of detainees"; "the rapid increase in arrivals overwhelmed the refugee status and security assessment processing resources despite the Department of Immigration and Citizenship's action to train additional staff"; and "in this environment, problems of health, including mental health, increased, and detainee anger and frustration rose, often producing violent reactions and self harm."

The Gillard Government appeared to remain firmly committed to offshore processing and at the Australian Labor Party National Conference in December 2011 it was agreed that the party Platform would be amended to reflect the Government's intention to continue to pursue this policy in the context of 'strong regional and international arrangements to deter secondary movements of asylum seekers'. However, after the collapse of the phantomatic 'Timor Solution', the withdrawal of the *Migration Legislation Amendment (Offshore Processing and Other Measures) Bill 2011* and the subsequent collapse of the 'Malaysia Solution' - and the new proposal for an 'assessment centre' on Manus Island in Papua New Guinea, the Government announced other options to relieve the pressure on detention centres. Already in October 2011 the Gillard Government had proposed that some asylum seekers who arrive unauthorised by boat be issued with bridging visas - just like most air arrivals - and released from detention into the community while their claims were processed.

The Government appeared to be particularly sensitive to the problem of imprisoning children - particularly unaccompanied children. Some, but not all of them, were moved into the community.

Later on, in July 2012, while the Houston Panel was examining submissions, the Australian Human Rights Commission would deliver the Government another message: the rights of Indonesian children had been flouted for a long time under the pressure of 'public opinion'. It would have been quite embarrassing for any lawyer, even one like Ms. Gillard, and more so for one like the Attorney-General, for Ms. Roxon had had a rather distinguished career and certainly had a reputation to defend.

For years, Australian authorities had been incarcerating Indonesian children and wrongly accusing them of being adult people smugglers. The Australian Government had been influenced by an "adverse public discourse" around people smugglers, according to the President of the Human Rights Commission.

Ms. Catherine Branson, Q.C. would present her report titled *An age of uncertainty* to the Attorney-General on 27 July 2012. In a 427 page document, most cogently argued, the Commission indicted the Australian Federal Police, the federal Attorney-General's Department and the Commonwealth Director of Public Prosecutions Office for flouting child rights - and undermining the right to a fair trial.

In 15 cases where Indonesian youth were convicted by Australian courts of people smuggling charges, it was eventually established that there was “doubt” whether they were adults when apprehended. They were eventually released, “having spent an average of 948 days in detention.” Another 48 youths, who were initially charged with adult criminal offences, had “spent an average of 431 days in detention” - including long stints in adult prisons. Ultimately, the prosecutions were abandoned.

They were, mostly poor, illiterate, innumerate youth - *but* Indonesian, *and* Muslim.

The Report would reveal how discredited wrist X-ray techniques were embraced as the best method to distinguish children from adults for prosecution purposes. The official policy at the time - as is now - was to charge minors only in exceptional circumstances. However, between 2008 and late 2011 - and thus during the Rudd/Gillard and the Gillard/Swan governments - in most cases where wrist X-rays suggested that Indonesian boat crew were “skeletal mature”, authorities immediately treated them as adults.

“We know now that many young Indonesians assessed to be adults on the basis of wrist X-ray analysis were in fact children at the time of their apprehension, or are very likely to have been children at that time.” the Report said. “Having a mature wrist is quite consistent with a person being under the age of 18 years.”

Persisting with this method, and other errors, led to “prolonged detention” of a number of children from impoverished fishing villages.

Overall, 180 Indonesian boat crew who arrived in Australian territory between 2008 and 2011 stated they were minors.

President Catherine Branson, Q.C. said that the Report exposed that “Australian authorities did not respect the rights of children” involved. She concluded that the most likely explanation was that “the adverse public discourse that we have in Australia around issues of people smuggling and the perceived need to be tough on people smugglers” influenced judgments of key agencies.

Ms. Branson said that she hoped the inquiry would lead to “mature” reflection on the strengths and weaknesses of the criminal justice system more generally. “The inquiry has

revealed that this system may be insufficiently robust to ensure that the human rights of everyone suspected of a criminal offence are respected and protected.” she said.

Meanwhile, the Report also raises the prospect that the minors who crewed the boats may have been “victims of trafficking”. “Many individuals who have been investigated and prosecuted for people smuggling offences in Australia appear to have been told that they would be transporting cargo, such as rice or fruit, around Indonesian islands or that they would be taking tourists on a tour of the Indonesian archipelago.”

Attorney-General Nicola Roxon said the Report dealt with people who were subject to age-determination practices prior to changes made by the federal government in 2011. “These changes now see minors returned to Indonesia as soon as possible.” she said

The Australian Lawyers Alliance called for the Australian Government to pay compensation to children who had been illegally detained.

On 25 November 2011 the Minister for Immigration and Citizenship announced that the first group of asylum seekers - all long term detainees - would be released on bridging visas under the already mentioned arrangement.

On 22 June 2012 the Leader of the Opposition, Mr. Abbott indicated that he would accept no refugee proposal which would not involve re-opening Nauru. In order to obtain support for the ‘Malaysian Solution’ which involves sending boat arrivals to Malaysia in return for other refugees, Immigration Minister Chris Bowen said that he would inquire into reopening Nauru. Prime Minister Gillard also said she would consider reopening Nauru.

On 25 June 2012 *The (Melbourne) Herald* reported that it understood that the Government would canvass reopening Nauru in the absence of the Malaysia deal being passed by Parliament, and for the outside hope that it could work to stop an increasing number of boats arriving at Christmas Island but also to prove Mr. Abbott wrong and to put further pressure on him over the ‘Malaysia Solution’.

Government sources denied that this resolution had been discussed but agreed that it was likely to be considered. The Department of Immigration advised the Government and the Opposition in 2011 that the Howard Government’s ‘Pacific Solution’, that Labor had abandoned, would not work again.

On 27 June 2012 a government supporter's private bill which included the Nauru solution as well as Malaysia passed the House of Representatives, but failed in the Senate, where the Australian Greens and the Coalition opposed the bill.

On 29 June 2012 human rights lawyer Julian Burnside, Q.C. told the A.B.C.'s *Triple J* and *Fairfax* services that asylum seekers should be processed in Indonesia in order to prevent more deaths among those trying to reach Australia by boat. He said that people who are found to be refugees should be given tickets allowing them eventually to settle in Australia so long as they don't get on a boat. Mr. Burnside said that the Malaysia and Nauru solutions will not curb deaths.

On 21 July 2012 Mr. Abbott exhorted Prime Minister Gillard to make progress during Parliament's winter break in reopening Nauru and Manus Island detention centres. But Nauru remained closed.

Two thirds of the 1,547 people processed on Manus Island and Nauru were eventually resettled in Australia and New Zealand. A small number went to Scandinavia and Canada. The remaining third returned, under pressure, to their countries of origin. Some of them were killed and many others found conditions were too unstable and unsafe for them to remain and made their way to other countries.

* * *

Problems surrounding mandatory detention have been the subject of vigorous debates since it was introduced in 1992, igniting great passion in both its supporters and detractors. The provision has been presented and retained as a necessary measure 'to maintain the integrity of Australia's immigration system and protecting our borders'. Others - more sensitive, well informed, but not numerous, and not powerful at the ballot box, argued that detaining asylum seekers is contrary to the spirit and the letter of international law, is inhumane, is largely ineffective in reducing/containing the number of unauthorised arrivals, and finally is economically very costly.

Investigations have been followed by reports, promoted and delivered by different governments in office from time to time, and by non-government organisations since the policy was introduced in 1992.

In 1993 the Joint Standing Committee on Migration conducted an inquiry into immigration detention, following public concern regarding the mandatory detention of unauthorised arrivals seeking refugee status. The Committee's report, *Asylum, border control and detention*, released in 1994, recommended that unauthorised arrivals seeking refugee status continue to be mandatorily detained for the duration of the claims process, but that there be a "capacity to consider release where the period of detention exceeds six months."

A 1998 Report from the Human Rights and Equal Opportunity Commission, *Those who've come across the seas: detention of unauthorised arrivals*, restated that the policy of mandatory detention violates international law, which permits detention only where necessary to verify a detainee's identity, to determine the elements on which the claim to refugee status or asylum is based, to deal with people who have destroyed their documents to mislead the authorities or to protect national security or public order. The Commission recommended that those whose detention cannot be justified for one of these reasons should be released, subject to reporting requirements, until their status is determined. It proposed a range of community release options.

The Report also found that the conditions, treatment and services for detainees varied considerably among the three detention centres which were the focus of the inquiry: Perth, Port Hedland and *Villawood*. The Commission made detailed recommendations to address human rights breaches which were identified, and significantly enhanced external oversight and monitoring of the conditions and treatment of detainees. The Coalition Government did nothing about it.

Also in 1998 the Australian National Audit Office published a report by the unflattering title *The management of boat people*, arguing that the detention and management of boat arrivals was costly and inefficient. Persuasive as the argument was, it would not impress the Coalition government, which was conscious of the advantages of preserving the contrived public apprehension about newcomers.

In 2001 the former Secretary of the Department of Foreign Affairs was asked by the Coalition Minister for Immigration and Multicultural Affairs to undertake an inquiry into immigration detention procedures. The resulting report expressed concerns over conditions throughout the detention system - particularly in the remote centre at Woomera - and documented several instances of psychiatric problems, self harm and sexual, verbal and physical abuse of children in Curtin, Port Hedland, *Villawood* and Woomera immigration detention centres. The report recommended that in its management of long-term detainees the competent Department should ensure that children are not held in detention for long periods - particularly at Woomera - and that processing times for temporary protection visas be reduced.

In another 2001 report on visits to immigration detention centres, the Joint Standing Committee on Foreign Affairs, Defence and Trade also expressed a number of concerns about the human rights and detention conditions for detainees.

In 2002 the Select Committee on *A certain maritime incident* inquiry report on the *Tampa* affair, the 'children overboard' incident and the 'Pacific Solution' was published. The report was critical of the uncertain outcomes for those being processed under the 'Pacific Solution' and the lack of transparency in the implementation of the arrangements - involving long processing times and a lack of scrutiny of the procedures.

In 2004 the Human Rights and Equal Opportunity Commission published *A last resort? The national inquiry into children in immigration detention*. The report was scathing in its criticism of the mandatory detention of children. The inquiry found that Australia's immigration laws, as administered by the Commonwealth, and applied to unauthorised arrival children, are responsible for a detention system which is fundamentally inconsistent with the Convention on the Rights of the Child. The inquiry further found that children in long term immigration detention were at risk of serious psychological harm, and that failure to remove

children from detention with their parents constituted cruel, inhumane and degrading punishment.

In July 2005 the *Inquiry into the circumstances of the immigration detention of Cornelia Rau* - the Palmer Report - reported on the wrongful detention of Ms. Cornelia Rau, a German citizen and Australian permanent resident who was unlawfully detained for a period of ten months in 2004 and 2005 as part of the Australian Government's mandatory detention programme. In its main findings the report noted serious problems with Australia's handling of immigration detention cases and suggested that urgent reform was necessary.

Even more heartrending was the case of Ms. Vivian Alvarez Solon.

What happened to Ms. Alvarez Solon before she appeared at Lismore Base Hospital in 2001 is unclear. She was treated for serious injuries which continue to afflict her still: she can walk with a crutch but often uses a wheelchair and the use of her fingers and one arm is limited. Sadly, her trauma also appears to have affected her memory: she said she wanted to see her family but could not remember who they were. This combination of physical weakness and mental confusion possibly explains how it was that Ms. Alvarez Solon, a middle age person *and* an Australian citizen, accepted her fate: to live for four years among the dying at the Mother Teresa Missionaries of Charity hospice in the Philippines city of Olongapo.

How she came to be deported from Australia and separated from her children, one of whom would be in foster care for four years as a result, is a matter the Australian Government did not and still cannot explain. Her story, as it had been reported, still raises a number of questions. How is it that she was deemed to be an illegal immigrant three days after being listed as a missing person by Queensland Police ? What mechanism determined that this injured woman, with no known family or resources, should be handed over to Catholic nuns and how is it that, once she had been accepted into their care, the Australian Government was not able to find her ? As long as at August 2003 Queensland Police realised that Ms. Alvarez Solon had been deported but authorities, but said that they were unable to locate her in the Philippines.

Immigration Minister Amanda Vanstone pithily summed up Ms. Alvarez Solon's history: "There's a woman who was clearly in need of help and who through, I think it's fair to say, no fault of her own ended up in an immigration detention facility and clearly didn't have the capacity to explain to people who she was. And that is a tragic situation." And that was that.

And was that it ?

It appeared important that the questions regarding Ms. Alvarez Solon's deportation be answered, but the case also raised larger concerns.

Like Ms. Cornelia Rau, the mentally ill Australian resident who was wrongly detained in the Baxter detention centre, when Ms. Alvarez Solon came to the attention of the Immigration Department she was incapable of explaining herself and defending her rights. This inability has had tragic consequences, not only for her but for her children. The failure of authorities to provide proper care and protection for a woman who desperately needed their help is perhaps the most disturbing aspect of her story. When the Cornelia Rau case came to light, Prime Minister Howard said that he could not guarantee other Australians had not been wrongly detained by immigration authorities.

There was the usual investigation, prudentially controlled in its terms of reference and the powers of the investigators. That is the style of the Australian Government under the Westminster System.

In October 2005 a report on Ms. Solon's deportation was released, following the inquiry conducted by former Victoria Police Commissioner Neil Comrie. The report revealed that several senior Department of Immigration officials in Canberra knew about Ms. Solon's unlawful deportation in 2003 and 2004, and failed to act. It also found that Ms. Solon's mental and physical health problems were not given proper attention. Ms. Solon returned to Australia on 18 November 2005.

There was the usual kerfuffle, with press, government, police and 'the public' involved for some time, until the matter was abandoned out of exhaustion and everyone's indifference - except for a pugnacious legal team.

On Ms. Alvarez Solon's return to Australia her lawyers confirmed that a request for compensation would be determined by retired High Court Judge Sir Anthony Mason after Vivian and her legal team had reached agreement on the form of a private arbitration. As part of the deal the Australian Government confirmed that it would care for Ms. Solon until the arbitration process was completed.

On 30 November 2006 Sir Anthony Mason awarded Ms. Solon a compensation payout, reported by *The (Melbourne) Age* newspaper as \$4.5 million. But the Australian Government refused to confirm the amount, citing 'privacy reasons'.

Both the Palmer's and the Comrie's explorations were hampered by considerations of 'privacy' - whose 'privacy' not being quite clearly established. Neither investigator had the power to subpoena witnesses and the people who appeared before them did not have legal protection. This necessarily limited an investigator's activity. The only 'privacy' to be protected seemed to be that of 'public' servants and officers.

The cases of Ms. Cornelia Rau and Ms. Vivian Alvarez Solon are unhappy addenda to the stories of those souls who are trapped in mandatory detention. And if that could happen to two persons lawfully entitled to be in Australia what of the *poorchrists* left to the whim, slothfulness, incompetence, prejudice, xenophobia of 'public' servants and the sheer irresponsibility of Ministers of Immigration ?

Initially under the Labor Government the intensity of public debate on mandatory detention was subdued due to the small number of boat arrivals, the dismantling of the 'Pacific Solution' and the announcement of an overhaul of the policy of mandatory detention guided by seven 'key immigration detention values'.

On 5 June 2008 the Joint Standing Committee on Migration was asked to conduct an inquiry into immigration detention at a time when there were very few unauthorised boat arrivals; only three boats arrived in 2007-2008 and there were only 408 people in immigration detention in Australia as at 6 June 2008. The Committee examined a variety of issues, including detention facilities and services, detention length, criteria for release and community based alternatives to detention. In the first of three reports the Committee praised the Government for its 'New Directions' policy and stated that Minister Evans' announcements signalled a paradigm shift in Australian policy. The presumption of detention which defined the policy of the previous Government had shifted to an assumption of release following minimum checks. The onus would be on the Department of Immigration and Citizenship to demonstrate that detention is necessary. The Committee welcomed the announcement of these values and the commitment of the Government to a fairer and more humane system for asylum seekers and others who are detained in immigration custody. The Committee expressed the view that this would have been "not just a new beginning for

people held in detention, but for Australian society in determining the detention time, nature and treatment of those who come to our shores.”

However, the third report, which was published after an increase in the arrival of people by boat, noted that there were still serious concerns regarding the well-being of detainees both on the mainland and on Christmas Island: “The Committee acknowledges that the Australian Government has made positive steps to introduce more appropriate and humane accommodation and facilities through immigration residential housing and immigration transit accommodation. However, the standard of the accommodation and facilities provided at immigration detention centres was of a serious concern, ... Many detention facilities also have disproportionate and antiquated security measures such as razor/barbed wire, ... The Committee, and many other organisations, continue to have some reservations about the Department of Immigration and Citizenship’s capacity to shift to a risk-averse framework where the onus is on establishing the need to detain. The primary concern of immigration authorities should be one of care for the well-being of detainees.”

A dissenting report by Liberal backbenchers also argued that the issue of the detention of children had not been adequately addressed by any of the three reports and that the length of detention and the detention conditions they were experiencing were ‘disturbing’.

Since the Joint Standing Committee on Migration completed its inquiry into immigration detention the debate has intensified due to the increase in the arrival of asylum seekers by boat and the corresponding rise in the number of immigration detainees on Christmas Island and in onshore detention centres.

In recent times the duration of detention has again become an issue of concern. When the surge in boat arrivals began in late 2008 asylum applicants were initially processed and released from detention relatively quickly. However, as more and more people arrived processing times began to increase and the period of time people were spending in detention began to drag out once again. The situation was exacerbated by the freeze on processing for applicants from Afghanistan and Sri Lanka which was imposed by the Rudd Government in April 2010. The stated rationale was to enable decision makers to consider ‘evolving circumstances in these two countries’, and to wait for new country guidelines from the U.N.H.C.R. The effect of this freeze was that people remained in detention for up to six months before processing of their claims even began.

In reports on its 2011 inspections of the *Villawood* and Curtin Immigration Detention Centres, the newly renamed Australian Human Rights Commission expressed frustration and concern about detention conditions, both onshore and on Christmas Island, and on Australia's mandatory detention policy generally: "The Commission's longstanding concerns about Australia's immigration detention system have escalated over the past year, with ongoing troubling incidents across the detention network. These have included six deaths in detention - five of which appear to have been the result of suicide, suicide attempts, serious self-harm incidents including lip-sewing, riots, protests, fires, break-outs and the use of force against people in detention on Christmas Island by the Australian Federal Police. These incidents have occurred in the context of a detention network that is under serious strain due to a number of factors, but most importantly because thousands of people are being held in detention facilities for long periods of time."

Still, as of 11 March 2011, with a new Labor Government, there were 6,819 people, including 1,030 children, in immigration detention in Australia, of whom 4,304 on the mainland and 2,515 on Christmas Island. More than half of those people had been detained for longer than six months, and more than 750 people had been detained for longer than a year.

In vain the Australian Human Rights Commission has repeatedly raised concerns about the detrimental impacts that prolonged and indefinite detention has on people's mental health, and had repeatedly recommended reforms to bring the immigration detention system into line with Australia's international obligations. The Commission was quite clear: "In the Commission's view, there is an urgent need for the Australian Government to end the current system of mandatory and indefinite detention, and to make greater use of community-based alternatives that are cheaper, more effective and more humane than holding people in immigration detention facilities for prolonged periods."

If there was any embarrassment on the part of the government not many people noted it.

The 2011 Australian Human Rights Commission report on Curtin Immigration Detention Centre, which had been reopened in June 2010 to assist in accommodating the growing number of detainees, also reinforced the Commission's key concerns over pressures on the infrastructure, services, facilities, staff and detainees in Australia's detention facilities.

The level of political interest regarding immigration detention forced the establishment, in June 2011, of a parliamentary inquiry into the detention network. The inquiry was initially

proposed by the Coalition Opposition to draw attention to increasing levels of unrest and outbreaks of violence in detention centres. Following some negotiation concerning its terms of reference, the motion to establish the inquiry was passed with the support of the Australian Greens and the Government. The inquiry's terms of reference were extensive and included an examination of the impact, effectiveness and cost of mandatory detention and the alternatives. The Committee had received a large number of submissions which had been highly critical of Australia's current immigration detention policies and voiced the concerns of many organisations.

* * *

If the matter of mandatory detention could be argued no end, and simply to disguise the fear, prejudice and ultimately xenophobia which has been running through the veins of institutional Australia from the moment of the invasion and subsequent commodification of the Indigenous People, nothing could justify the detention of children.

The detention of children continues to be one of the most contentious issues of Australia's mandatory detention policy. It is also the one area which has seen a significant shift in policy in response to sustained criticism by refugee advocates, human rights groups and government backbenchers.

During the Howard Government, the Australian Human Right Commission produced a report in 2004 which was highly critical of the detention of children. In response, the Government rejected the findings and recommendations of the report and reaffirmed its commitment to the policy of mandatory detention. At the time the Minister stated that "to release all children from detention in Australia would be to send a message to people smugglers that if they carry children on dangerous boats, parents and children will be released into the community very quickly."

However, in June 2005, following significant pressure from certain Coalition members of the back bench, the Howard Government announced a 'softening' of immigration detention policy, including the release of families with children into community detention arrangements.

The detention of children has also proved to be a contentious issue for the Labor Government. One of the seven ‘immigration detention values’ endorsed by Cabinet in 2008 was that children should not be held in immigration detention centres, but in lower security detention alternatives such as immigration transit accommodation or in community detention. Yet as more and more people began arriving by boat from 2008 onwards this ‘value’ was put to the test. The number of children being held in detention rose steadily, attracting vocal criticism from refugee advocates and human rights groups.

In response to growing pressure by interest groups and overcrowding in detention centres generally, the Immigration Minister announced in October 2010 that children would be progressively moved out of detention facilities into community-based accommodation by June 2011. Progress on this commitment proved to be slow, but by 30 June 2011 the Government announced it had moved ‘most’ children out of centres and into community detention. According to the Department of Immigration and Citizenship, as at 31 July 2011 there were 872 children - *i.e.* aged under 18 years - in immigration detention. 446 were detained in the community under residence determinations, 329 were in alternative places of detention, 45 were in immigration residential housing and 52 were in immigration transit accommodation. No children were detained in an immigration detention centre. An increasing number of children were living in the community under a residence determination (community detention) since the Government's announcement on 18 October 2010. The number of children in immigration detention has also been decreasing.

Community detention, or residence determination as it is otherwise known, was introduced in June 2005. The term ‘residence determination’ refers to the process by which the Minister for Immigration and Citizenship specifies that a person may live in community detention. It enables certain asylum seekers to reside in the community without needing to be accompanied by an officer while their applications for refugee status are being processed. Residence determination does not give a person lawful status or the right to work or study in Australia.

In August 2011 the Department of Immigration and Citizenship provided the [Joint Select Committee on Australia's Immigration Detention Network](#) with the following data on people transferred into community detention:

1) Between 18 October 2010 and 27 July 2011 1,601 individuals - 823 adults, 514 accompanied children and 264 unaccompanied minors - had been approved for community detention:

- 1,504 individuals - 769 adults, 486 accompanied children and 249 unaccompanied minors - had been moved into community detention
- 69 individuals - 30 adults and 25 children and 14 unaccompanied minors - were approved for community detention but granted protection visas before they moved into community detention
- 28 individuals - 24 adults and 4 accompanied minors) had been approved by the Minister and were in the process of moving into community detention.

On 1 November 2011 over thirty key health and mental health organisations and mental health advocates demanded that the Government urgently review the standards of mental health care in all immigration detention centres.

“This issue - the petitioners were saying - is urgent and action needs to be taken now. The mental health of immigration detainees can’t wait until the political debate over the appropriateness of immigration detention has been resolved.

Every person has the right to be treated with dignity and respect, to have decent living conditions, and freedom to communicate with their family, lawyers and friends. The Government must act now to make the changes to the living conditions and freedoms that will improve the mental health and wellbeing of people in detention.

Detainees have the right to mental health care commensurate with their need. The Government’s own National Practice Standards for the Mental Health Workforce should apply to detention centre staff. Mental health professionals need to be able to work within the same standards that protect everyone in Australia to ensure that the care they provide to detainees is effective and safe.”

In early October a report from the Australian Human Rights Commission had been released, and was raising serious questions about the mental health impacts of indefinite detention on people being held at the Curtin Immigration Detention Centre.

There were genuine concerns that the Government was not providing adequate mental health care to people in detention centres at a time when incidents of self-harm and suicide have increased, and riots, protests, and hunger strikes have become common.

It was clear that conditions inside detention centres are unacceptable.

Children - the petition emphasised - are especially vulnerable. The mental health crisis in the immigration detention system is rapidly worsening and these conditions cannot be allowed to continue.

The Government was requested immediately to launch an independent investigation into the standards of mental health care in Australia's immigration detention centres.

The statement was signed by prominent organisations and professionals in the field. Among the organisations were Australian College of Mental Health Nurses, Australian Nursing Federation, Australian Medical Association, Royal Australian & New Zealand College of Psychiatrists, Mental Health Council of Australia (MHCA), Brain & Mind Research Institute, Orygen Young Health, National Mental Health Consumer & Carer Forum, Australian Psychological Society, ConNetica (Prof John Mendoza), SANE Australia, Royal College of Nursing Australia, Lifeline Australia, Australian College of Psychological Medicine, Mental Health Research Institute, Catholic Social Services Australia, The Mental Health Association of Central Australia, ACT Mental Health Consumer Network, Mental Illness Fellowship of Australia, Mental Illness Fellowship NQ, Multicultural Mental Health Association of Australia, GROW, Crisis Support Services, Neami Limited, Norwood Association Inc., Alcohol and Other Drugs Council of Australia, Queensland Voice for Mental Health, Australian Association of Social Workers, Reconnexion, The Royal Australian College of General Practitioners, Carers Australia, and Suicide Prevention Australia; among the specialists in the field were Prof. Ian Hickie, Prof. Pat McGorry, Prof. John Mendoza, and Prof. Louise Newman.

Since then, however, and during the course of the inquiry by the Joint Committee which reported on 12 April 2012, the community detention programme continued to expand at a rapid rate. The Department estimated that, as at 13 February 2012, there were 1,576 people in community detention. Included in this figure were 1,047 adults and 529 children. Of the 529 children, 133 were unaccompanied minors.

Many more people had been approved by February 2012, but not yet moved out of detention facilities and into community detention. The Department advised that as at 15 February 2012, over 3,200 people had been approved for community detention. Of these, 1,582 had already been moved.

There were approximately 700 children in 'held detention' on October 2010. As at 17 February 2012 there were more than 660 children already in or transitioning into community detention. This figure represents 64 per cent of asylum seeker children. Of the 660 children, 212 were unaccompanied minors. This figure represents 57 per cent of unaccompanied asylum seeker minors.

By 14 March 2012 the number of children in held detention stood at 479, while 544 were in community detention. Children in the community detention programme have access to schooling, which includes English language classes.

* * *

Any serious discussion of asylum seekers and refugees is hampered by the persistence of two facile and poisonous myths. Parliamentary 'debate' of the fundamental issues narrowed down to exchanges between Government and Opposition on trite points, mainly for the purpose of emphasises the unworthiness of the asylum seekers, who were portrayed as 'illegal migrants' and 'queue jumpers'.

In the process, and during the year 2011-2012, the major parties entered into a competition to device punitive measures to discourage the arrival of new boats, a descent into nastiness which could still not match the terror from which the asylum seekers were fleeing.

Most arguments, used with particular animosity by speakers from the 'Liberal' Opposition, displayed a gross dose of intellectual dishonesty.

Asylum seekers who attempt to reach Australia are neither engaging in illegal activity as illegal immigrants, nor a threat to Australia's national security. They certainly do not jump queues which exists only in the impressionable minds of the ignorant majority - and at that

a self-inflicted and self-satisfied ignorance. Finally, they do not take places away from refugees in overseas camps.

The United Nations Refugee Convention recognises that refugees have a right to enter a country for the purposes of seeking asylum, regardless of how they arrive or whether they hold valid travel or identity documents. The Convention stipulates that what would usually be considered as illegal actions - *i.e.* entering a country without a visa - should not be treated as illegal if a person is seeking asylum. This means that it is incorrect to refer to asylum seekers who arrive without authorisation as 'illegal', as they in fact have a right to enter Australia to seek asylum.

In line with its obligations under the Convention, Australian law also permits unauthorised entry into Australia for the purposes of seeking asylum. Asylum seekers do not break any Australian laws simply by arriving on boats or without authorisation. Australian and international law make these allowances because it is not always safe or practicable for asylum seekers to obtain travel documents or travel through authorised channels.

Refugees are, by definition, persons fleeing persecution and in most cases are being persecuted by their own government. It is often too dangerous for refugees to apply for a passport or exit visa or approach an Australian Embassy - where it exists - for a visa, as such actions could put their lives, and the lives of their families, at risk.

Refugees may also be forced to flee with little notice due to rapidly deteriorating situations and do not have time to apply for travel documents or arrange travel through authorised channels. Permitting asylum seekers to enter a country without travel documents is a way of recognising that extreme circumstances warrant an exception to the strict legal position.

It is also incorrect to refer to asylum seekers as migrants. A migrant is someone who chooses to leave her/his country to seek a better life. A migrant make a conscious and deliberate choice to leave and ordinarily knows that return is always possible. Refugees are forced to leave their country and cannot return unless the situation which forced them to leave improves. Some are forced to flee without warning; significant numbers of them have suffered torture and trauma. The concerns of refugees are human rights and safety, not economic opportunities.

Nor are asylum seekers a threat to Australia's national security.

The majority of asylum seekers, up to 90 per cent, who have reached Australia by boat have been found to be genuine refugees. That figure should be compared with the around 40 to 45 per cent of asylum seekers who arrive with some form of temporary visa - e.g. tourist, student or temporary work visa. In 2010-2011, 89.6 per cent of asylum seekers arriving by boat were found to be refugees, compared to 43.7 per cent of those who arrived with valid visas.

According to the Australian Security Intelligence Organisation - which is responsible for the protection of the country and its citizens from espionage, sabotage, acts of foreign interference, politically motivated violence, attacks on the Australian defence system, and terrorism - of the 34,396 visa security assessments which were made in 2010-2011, only 45 visas were refused or revoked. Understandably, every case is assessed on its individual merits; however, from these numbers it can be seen that the risks are very low.

The Refugee Convention excludes people who have committed war crimes, crimes against peace, crimes against humanity or other serious non-political crimes from obtaining refugee status. Any person who is guilty of these crimes will be denied refugee status. Additionally, all asylum seekers must undergo rigorous security and character checks before being granted protection in Australia. It is therefore highly unlikely that a war criminal, terrorist or any other person who posed a security threat would be able to enter Australia as a refugee. It is also improbable that a criminal or terrorist would choose such a dangerous and difficult method to enter Australia, given that asylum seekers who arrive without authorisation or without valid travel documents undergo more rigorous security and identity checks than other entrants to Australia.

During the 'debate', former Prime Minister Kevin Rudd, a former diplomat, a person who wants to be taken seriously and displays a certain demeanour, a person who purports to draw inspiration for his life from Dietrich Bonhoeffer, on 17 April 2009 reached the nadir of debasement by declaring that "People smugglers are engaged in the world's most evil trade and they should all rot in jail because they represent the absolute scum of the earth."

The fundamental point is that, if a person can afford to pay a people smuggler thousands of dollars to gain safety from persecution in Australia, and if the claim to refugee is genuine and supported, the mode of arrival should not matter.

Economic status has no bearing on refugee status. A refugee is someone who has a well-founded fear of being persecuted because of her/his race, religion, nationality, membership of a particular social group or political opinion.

It makes no difference whether a refugee is rich or poor; the point is that refugees are at risk of, or have experienced, persecution. Many refugees arriving in Australia are educated middle-class people, whose education, profession or political opinions have drawn them to the attention of the authorities and resulted in their persecution.

* * *

Applying for protection onshore is not a means of ‘jumping the queue’ or bypassing the ‘proper’ process of applying for protection. Most of the people who attempt refuge in Australia are fleeing war zones, in parts of the world where Australia might have been seen to play its part as trusted vassal in American’s adventures.

In fact, applying onshore is the standard procedure for seeking protection. According to the definition in the Refugee Convention, refugees are persons who are outside their country of origin. This means that one cannot apply for refugee status from inside one’s own country. In order to be recognised as a refugee, one must leave her/his country and apply for refugee status in another country. Every refugee in the world - including those whom Australia resettles from overseas - has, at some point, entered another country to seek asylum.

The vast majority of the world’s refugees either return home once conditions which forced them to leave have improved or settle permanently in the country of first asylum.

For some refugees, however, these solutions are impossible. For example, some countries are hosting very large numbers of refugees or do not have the capacity to provide effective protection, and therefore require assistance from other countries to fulfil their protection

obligations. In other cases, a country may simply refuse to provide any form of protection or assistance to refugees and asylum seekers.

In these sorts of cases, it may be necessary for refugees to be resettled in a third country. However, there is no resettlement 'queue' that onshore applicants are trying to evade. Resettlement is intended to be a complement to, not a substitute for, providing protection to refugees who apply for asylum onshore. It is a way of providing a solution for refugees who have been unable to find effective protection elsewhere, but is certainly not the standard or only 'legitimate' way to find protection. It is simply a different solution based on different circumstances. In fact, only a tiny minority - less than one per cent of the world's refugees - are resettled in third countries.

The United Nations resettlement system does not work like a queue. The word 'queue' implies that resettlement is an orderly process and, if one joins the end, one is guaranteed to reach the front within a certain amount of time. In reality, the United Nations resettlement system works more like a lottery than a queue. Many refugees lack access to the United Nations High Commissioner for Refugees' resettlement processes altogether and therefore simply do not have resettlement available to them as an option.

Furthermore, refugees are considered for resettlement according to need, not according to how long they have been waiting. These needs fluctuate and are continuously reassessed. For example, conditions in a refugee-producing country may improve, allowing refugees from that country to return home if they wish; or conditions in a refugee-hosting country may deteriorate, placing the refugees in that country in greater need of resettlement.

Finally, asylum seekers do not take places away from refugees in overseas camps.

The myth that asylum seekers take places away from refugees who are resettled from overseas does have some basis in truth. However, this is not because asylum seekers are trying to rot the system or 'jump the queue'. They have a right to seek asylum and Australia has a legal - not to mention a moral - obligation to process their claims. What little truth there is in the myth is the direct result of Australian Government policy.

Australia's refugee programme has two components: 1) the onshore component, for people who apply for refugee status after arriving in Australia, and 2) the offshore component, under

which Australia resettles recognised refugees and other people in need of protection and assistance. The onshore and offshore components are numerically linked, which means that every time an onshore applicant is granted a protection visa, a place is deducted from the offshore programme.

The linking policy blurs the distinction between Australia's legal obligations as a signatory to the Refugee Convention - addressed through the onshore component - and its voluntary contribution to the sharing of international responsibility for refugees for whom no other durable solution is available. The perception that there is a 'queue' which onshore applicants are trying to evade is actually caused by a policy choice which could easily be changed. No other country in the world links its onshore and offshore programs in this way.

All human beings have a right to seek and enjoy in other countries asylum from persecution, which makes refugee protection a universal and global responsibility. As a signatory to the Refugee Convention and as a member of the international community, Australia shares in this responsibility. There is no reason why Australia should be exempt from receiving and processing onshore asylum claims while expecting other nations to fulfil this responsibility. As a developed nation with well-established systems for refugee status determination and strong settlement support infrastructure, Australia is well-placed to play a leading role in refugee protection, both within its region and at a global level.

A common misconception about refugee protection is that applying for resettlement from overseas is the 'proper channel' for seeking protection. In fact, resettlement of refugees in third countries is the exception rather than the rule. In general, resettlement is only used as a solution for refugees in cases where it is not possible for them to return home or settle permanently in the country where they first sought asylum.

Out of the world's 15.2 million refugees, the United Nations High Commissioner for Refugees has identified around 800,000 - approximately five per cent - as being in need of resettlement in coming years. In 2011, 79,800 refugees were resettled through U.N.H.C.R. with the U.S.A. receiving the highest number: 51,500.

Over the past 10 years an average of around 81,000 refugees have been resettled annually. At this rate, it would take 188 years for all of the world's refugees to be resettled. While there

remains a significant gap between resettlement needs and available places, it is not necessary, feasible or even desirable for all of the world's refugees to be resettled in third countries.

The enormity of the problem is analysed in a report released on 18 June 2012 by the United Nations High Commissioner for Refugees. The report shows 2011 to have been a record year for forced displacement across borders, with more people becoming refugees than at any time since 2000.

U.N.H.C.R.'s *Global Trends 2011* report detailed for the first time the extent of forced displacement from a string of major humanitarian crises which began in late 2010 in Côte d'Ivoire, and was quickly followed by others in Libya, Somalia, Sudan and elsewhere. In all, 4.3 million people were newly displaced, with a full 800,000 of these fleeing their countries and becoming refugees. "2011 saw suffering on an epic scale. For so many lives to have been thrown into turmoil over so short a space of time means enormous personal cost for all who were affected." said the U.N. High Commissioner for Refugees António Guterres. "We can be grateful only that the international system for protecting such people held firm for the most part and that borders stayed open. These are testing times."

Worldwide, 42.5 million people ended 2011 either as refugees - 15.2 million, internally displaced - 26.4 million, or in the process of seeking asylum - 895,000. Despite the high number of new refugees, the overall figure was lower than the 2010 total of 43.7 million people, due mainly to the offsetting effect of large numbers of internally displaced people returning home: 3.2 million, the highest rate of returns of internally displaced people in more than a decade. Among refugees, and notwithstanding an increase in voluntary repatriation over 2010 levels, 2011 was the third lowest year for returns - 532,000 - in a decade.

Viewed on a 10-year basis the report showed several worrying trends. One is that forced displacement is affecting larger numbers of people globally, with the annual level exceeding 42 million people for each of the last five years. Another is that a person who becomes a refugee is likely to remain as one for many years - often stuck in a camp or living precariously in an urban location. Of the 10.4 million refugees under U.N.H.C.R.'s mandate, almost three quarters - 7.1 million - have been in exile for at least five years awaiting a solution.

Overall, Afghanistan remains the largest source of refugees - 2.7 million - followed by Iraq - 1.4 million, Somalia - 1.1 million, Sudan - 500,000 and the Democratic Republic of the Congo - 491,000.

Around four-fifths of the world's refugees flee to their neighbouring countries, reflected in the large refugee populations seen, for example, in Pakistan - 1.7 million people, Iran - 886,500, Kenya - 566,500, and Chad - 366,500.

Among industrialised countries, Germany ranks as the largest hosting country with 571,700 refugees. South Africa, meanwhile, is the largest recipient of individual asylum applications - 107,000, a status it has held for the past four years. It was followed by the United States of America - 76,000, and France - 52,100.

U.N.H.C.R.'s original mandate was to help refugees, but in the six decades since the agency was established in 1950 its work has grown to include helping many of the world's internally displaced people and those who are stateless - those lacking recognised citizenship and the human rights which accompany this.

The *Global Trends 2011* report noted that only 64 governments provided data on stateless people, meaning that U.N.H.C.R. was able to capture numbers for only around a quarter of the estimated 12 million stateless people worldwide.

Of the 42.5 million people who were in a state of forced displacement as of the end of 2011, not all fall under U.N.H.C.R.'s care. Some 4.8 million refugees, for example, are registered with the U.N. Relief and Works Agency for Palestine Refugees. Among the 26.4 million internally displaced, 15.5 million receive U.N.H.C.R. assistance and protection. Overall, U.N.H.C.R.'s refugee and internally displaced people caseload of 25.9 million people grew by 700,000 people in 2011.

Because of what can only be characterised as the hostility of Australian authorities to the asylum seekers, many of them drowned in the attempt to reach Australia by unsafe boats.

By the time the Australian Parliament went into winter recess on 28 June 2012 both Government and Opposition had devoted much effort to commiserating for the loss of lives, jousting on how to find the way to avoid asylum seekers' deaths while continuing 'to maintain the integrity of the borders'. No solution had been found which would recognise and

honour the right of asylum seekers to reach for safety in Australia, by whatever means. And that really was the point.

The memory was still vivid of events such as the sinking of an unnamed boat, which came to be referred to as SIEV X. SIEV X sank in international waters on 19 October 2001, just south of the Indonesian island of Java, drowning 353 people, approximately 146 children, 142 women and 65 men died. The tragedy had political resonance for several reasons: the [Tampa affair](#) had already focused national media's attention on the issue of [asylum seekers](#), the sinking of SIEV X occurred during an election campaign at a time when asylum seekers and border protection were major issues, and it was rendered incandescent by a previous episode and the shameless use made of such tragedies by the Howard Government.

In the early afternoon of 6 October 2001, SIEV 4, carrying 223 [asylum seekers](#) had been intercepted by [H.M.A.S. Adelaide](#) 190 kilometres north of [Christmas Island](#) and then sunk. The next day the Minister for Immigration [Philip Ruddock](#) announced that passengers of SIEV 4 had threatened to throw children overboard. This claim was later repeated by other [senior government ministers](#) including Defence Minister [Peter Reith](#) and [Prime Minister John Howard](#).

On 20 February 2002 the Australian Senate Select Committee inquiring into *A certain maritime incident* met for the first time. Its primary task was to investigate the '[children overboard affair](#)', however its terms of reference also included investigating "operational procedures observed by the Royal Australian Navy and by relevant Commonwealth agencies to ensure the safety of asylum seekers on vessels entering or attempting to enter Australian waters."

The committee investigated the SIEV X sinking, and concluded that "... it [is] extraordinary that a major human disaster could occur in the vicinity of a theatre of intensive Australian operations and remain undetected until three days after the event, without any concern being raised within intelligence and decision making circles." While no government department was found to be to blame for the tragedy, the Committee was surprised that there had been no internal investigations into any systemic problems which could have allowed the Australian government to prevent it from occurring.

On 23 October 2002 in its report the Committee found that no children were thrown overboard from SIEV 4, that the evidence did not support the ‘children overboard’ claim, and that the photographs purported to show children thrown into the sea were taken after SIEV 4 sank. In response, Prime Minister Howard said that he acted on the intelligence he was given at the time.

A minority dissenting report, authored by government senators on the committee, described the inquiry as driven by a “misplaced sense of self-righteous outrage [felt] by the Australian Labor Party at its defeat in the 2001 federal elections.”

An appendix to their report documented cases where passengers aboard other SIEVs had threatened children, sabotaged their own vessels, committed [self-harm](#) and, in the case of [SIEV 7](#) on 22 October, thrown a child overboard who was rescued by another asylum seeker.

On 16 August 2004 a former senior advisor to Defence Minister Peter Reith, revealed that he had he told Prime Minister Howard on 7 November 2001 that the ‘children overboard’ claim might be untrue. Mr. Howard said that they only discussed the inconclusive nature of the video footage. In light of the new information, the Labor Opposition called for further inquiry.

On 15 December 2010 a boat carrying around 90 asylum seekers, mostly from Iraq and Iran, sank off the coast of Christmas Island, killing 48 people aboard; 42 survivors were rescued. The boat was later named SIEV 221.

Reciprocal accusations went on for years, much as they were cast in 2011 and 2012.

On 20 November 2011, 50 asylum seekers drowned after their boat was smashed to pieces on Christmas Island’s rocky coastline, as helpless residents watched in horror. More than 200 died in 2011 and about 100 would die in July 2012. In all, a thousand asylum seekers are thought to have died at sea since the late 1970s - many in vessels never detected by rescue crews.

The 79 asylum seekers from Afghanistan, Iraq, Iran, Sudan and Pakistan were rescued thanks to the efforts of local volunteers and naval personnel, although the captain of the ship is missing after he was believed to have jumped overboard to avoid arrest by the Australian authorities.

The near-tragedy occurred almost a year after the previous December's smashing of a refugee ship onto the cliffs of Christmas Island in similar conditions. That disaster, involving SIEV 221, cost the lives of 50 asylum seekers.

As with the SIEV 221, the Australian Government's Border Protection Command claimed that the latest boat arrived undetected, despite intensive surveillance of the waters between Australia and Indonesia.

On 17 December 2011 a refugee boat carrying at least 200 passengers sank, reportedly about 75 kilometres off the coast of Java. Though reports remained unclear, but it seems certain that more than 180 asylum seekers, including about 40 children, died attempting to sail from Indonesia to Australia, making it the greatest such disaster since the SIEV X sank in still unexplained circumstances in 2001, taking 353 lives.

On 22 June 2012 scores of asylum seekers were feared dead after a boat carrying more than 200 people capsized in waters north of Christmas Island. Efforts were continuing throughout the night to rescue victims, but treacherous conditions with waves up to 12 metres high were making it hard for rescuers to find survivors.

In the end 110 people had been rescued, with earlier reports that at least 75 had drowned.

The two major parties of Australian politics were accusing each other of helping people smugglers. Neither side was prepared to support the other's proposals for offshore processing of asylum seekers. Both the Government and the Opposition wanted to see no asylum seekers arriving to Australia by boat but could not agree on where to send the asylum seekers. The Government wanted to use Malaysia for offshore processing. The Opposition wanted to re-open Nauru.

The Government had adopted an amended policy, which was intended to circumvent the August 2011 High Court decision, and by which asylum seekers who have entered Australian waters or territory would be sent to either Nauru or Malaysia. However, the Opposition Coalition was adamant in rejecting Malaysia as a destination, or any other country which has not signed the Refugee Convention.

While Government, Opposition, the Greens and the Independents were united in expressing concern over the deaths, and some were visibly distressed during discussion on the issue, a

way out of the impasse could not be found, because Government and Opposition parties were rigidly committed to the off-shore processing policy and their incompatible versions of it.

Legislative amendments proposed by Independent members of Parliament also involved offshore processing but differed from the policy variations of the Government and Opposition, so they were rejected. The Greens have consistently opposed off-shore processing but are outnumbered.

A real solution had to be found because in 2012 alone more than 100 boats carrying 7,500 suspected asylum seekers arrived in Australia, after the Government failed to have legislation enacted and aimed at deterring them by sending them to Malaysia. The so-called 'Malaysia Solution' would have seen boatpeople arriving in Australia transferred to the Southeast Asian nation, with Canberra resettling thousands of that country's registered refugees in return.

The proposal was scuttled by the Opposition and the Greens, who refused to pass laws allowing off-shore processing. (to be continued)

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