<u>AUSTRALIA'S ASYLUM SYSTEM</u>

Introduction

Australia became a signatory to the *1951 Convention Relating to the Status of Refugees* (Refugees Convention) on 22 January 1954 and a signatory to the *1967 Protocol* (Protocol) on 13 December 1973. Australia also became a signatory to the *1984 Convention Against Torture* on 10 December 1985.

In complying with its obligations under the Refugees Convention, Australia has focused on off shore or out of country refugees. These are people who have been assessed by the United Nations High Commissioner for Refugees and determined to be refugees. They are usually in camps awaiting resettlement. Australia's *Offshore Humanitarian Program* provides resettlement for these refugees and others in greatest need of this durable solution.

In relation to international sharing of responsibility, the number of off shore refugees Australia accepts each year is on par with Canada and second to the USA, which accepts the largest number of refugees for resettlement each year.

Australia's on shore or in country refugee programme is relatively small in comparison with other Western countries. There are several reasons for this. Firstly, Australia is an island country and does not have any land borders. It therefore has no influx of asylum seekers over land borders. Secondly, it is geographically isolated from most of the rest of the world. Asylum seekers travelling to Australia must either undertake long and hazardous journeys by boat or long and expensive journeys by plane. Thirdly, Australia has extensive visa requirements to enter into Australia.

The majority of asylum seekers in Australia are people who come to Australia by plane, enter Australia legally and have been issued with a visa to do so. These are usually visitor visas, student visas or business visas. A number of checks are done before a person is allowed to enter Australia. Australia has a multi layered border management system. These layers include a universal visa system (with immigration alert checking), an airline liaison officers' network, an Advance Passenger Processing system (which operates at check-ins overseas), war crimes screening and the processing at Australian airports and seaports on arrival.

The number of asylum seekers who come to Australia unauthorized and by boat is relatively small. In the decade between 1992 and 2002 the Australian government passed a series of legislative changes in relation to unauthorized boat arrivals in Australia. The government stated that these changes were designed to strengthen Australia's territorial integrity, deter the activities of people smugglers and reduce incentives for people to make hazardous voyages to Australia. The implementation of these legislative changes was very controversial and gave rise to considerable criticism both nationally and internationally.

Since 2007 these controversial legislative changes have been significantly amended or abolished altogether. There has also been a review of Australia's asylum system and a number of policy changes have been implemented or are in the process of being implemented.

Comment

Until the early 1990s Australia had an excellent international reputation as one of the leading proponents of human rights standards. It was also one of the most generous asylum destinations. Between 1992 and 2002 there were a number of significant changes to Australia's immigration policies and laws. Some of these changes were influenced by external factors and some of them were the result of internal issues.

The two most controversial changes were the introduction of long-term mandatory detention including the detention of minors and the 'Pacific Solution', which excised or removed parts of Australian territory from its migration zone. Some critics argue that those changes were a breach of Australia's obligations under the Refugees Convention and under the *1989 Convention on the Rights of the Child* to which Australia is a signatory.

Following consistent and increasing national and international pressure, changes were made in relation to the long-term mandatory detention policy particularly with respect to minors. In 2005 the legislation was amended to provide that minors were only to be detained as a measure of last resort and most minors were released from detention.

In November 2007 a new Labour government was elected in Australia. This government announced significant changes to Australia's immigrations laws and policies. Since then the government has abolished long term mandatory detention, abolished the 'Pacific Solution', closed down the off shore immigration detention centres in Nauru and Manus Island (Papua New Guinea), reviewed all long term detention cases and abolished Temporary Protection Visas.

It remains to be seen whether all of the promised changes will be implemented and whether they will go far enough. Only time will tell whether Australia's previously held good international reputation could be restored.

1. Types of Protection

i) Protection Visas

In Australia asylum is principally granted in accordance with the definition of a refugee under the Refugees Convention as amended by the Protocol. If an asylum seeker is determined to be a refugee he or she is issued with a protection visa.

The criteria for a protection visa is that the applicant for the visa is a non citizen in Australia to whom the Minister of Immigration and Citizenship is satisfied Australia has

protection obligations under the Refugees Convention as amended by the Protocol or is a non citizen in Australia who is a member of the same family unit as such a person.[1]

Temporary Protection Visas (TPVs) were first introduced in Australia in October 1999. These visas were valid for a period of three years. They were issued to asylum seekers who had been determined to be refugees. The holders of TPVs could make an application, after thirty months, for a Permanent Protection Visa (PPV). Their protection claims were then reassessed and they were required to meet health, character and security criteria before being entitled to a PPV.

There were many critics of TPVs. They argued that if an asylum seeker was found to be in need of protection then he or she should be granted a PPV with all the benefits that come with permanent residence. They argued that a failure to do so punished an asylum seeker, denied him or her the opportunity for family reunification, left him or her in a state of limbo and unable to get on with his or her life.

On 9 August 2008 TPVs were abolished in Australia. Asylum seekers who are determined to be refugees after that date are issued with PPVs. Current TPV holders are able to apply for permanent visas called Resolution of Status Visas. These visas are issued without a reassessment of protection claims but the applicants are required to meet health, character and security criteria.

Another significant change proposed by the Minister of Immigration and Citizenship was the introduction of supplementary protection or complementary protection as it is referred to in Australia. On 8 September 2009 the government introduced the *Migration Amendment (Complementary Protection) Bill* 2009 into Parliament. Once this Bill is passed into legislation, protection will be extended to persons who are not Convention refugees but are persons in need of protection by virtue of the fact that they are at risk of arbitrary deprivation of life, having the death penalty imposed and carried out, being subjected to torture, being subjected to cruel or inhumane treatment or punishment or being subjected to degrading treatment or punishment.

This would be in accordance with Australia's obligations under the *1966 International Covenant on Civil and Political Rights, 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and the *1989 Convention on the Rights of the Child.*

ii) Humanitarian Visas

If an Application for a Protection Visa is refused by the Refugee Review Tribunal (RRT) or the Administrative Appeals Tribunal (AAT), the applicant may make an application to the Minister of Immigration and Citizenship for the issue of a Humanitarian Visa on humanitarian and compassionate grounds. The Minister of Immigration and Citizenship

[1] Section 36(2) Migration Act 1958.

has the power to substitute for a decision of the RRT [2] or a decision of the AAT [3] another more favourable decision. This power must be exercised by the Minister personally.

Some critics argue that the Minister of Immigration and Citizenship uses this power sparingly and that it should be used more generously and extensively particularly in circumstances where there are compelling reasons to do so.

(iii) Temporary Safe Haven Visas

A Temporary Safe Haven Visa is granted to a person to give the person temporary safe haven in Australia. The Minister of Immigration and Citizenship may extend the visa period or shorten the visa period if, in the opinion of the Minister, temporary safe haven in Australia is no longer necessary for the holder of the visa because of changes of a fundamental, durable and stable nature in the country concerned. [4]

Critics argue that the circumstance in which this type of visa is issued is too restrictive. In Australia they have been issued to groups of people from Kosovo and East Timor who were in need of safe haven during the periods of conflict in those countries.

2. The Asylum Process

The Asylum Process commences with the making of a claim by way of an Application for a Protection Visa. This application is lodged at any office of the Department of Immigration and Citizenship (DIAC). There is no time frame within which the application must be made.

i) Eligibility Screening

DIAC screens applicants for eligibility in relation to whether applicants have made prior Applications for Protection Visas. In order to be granted a protection visa, applicants must not only meet the definition of a refugee but also undergo medical examinations and satisfy Public Interest Criteria 4001, 4002 and 4003 (see below). Further, the Minister of Immigration and Citizenship must be satisfied that the grant of the visa is in the national interest.

Access to the asylum process may be denied on the following grounds:

a) Public Interest Criteria 4001 - Character grounds

Public interest criteria 4001 requires that the applicant satisfies the Minister of Immigration and Citizenship that the applicant passes the character test or there is

[2] Section 417 Migration Act 1958.
[3] Section 501J Migration Act 1958.
[4] Section 37A Migration Act 1958.

nothing to indicate that the applicant would fail the character test. The Minister also has the discretion not to refuse the grant of a visa on character grounds.

An applicant does not pass the character test if he or she has a substantial criminal record, is involved in organized crime or criminal conduct or presents a significant risk to the community. For the purpose of Article 33(2) of the Refugees Convention, a 'particularly serious crime' includes a serious Australian offence or a serious foreign offence.

b) Public Interest Criteria 4002 - Security grounds

Public interest criteria 4002 requires that the applicant is not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*.

'Security' is defined as the protection of, and of the people of, the Commonwealth and the several States and Territories from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia's defence system or acts of foreign interference, whether directed from or committed within Australia or not, and the carrying out of Australia's responsibilities to any foreign country in relation to an abovementioned matter.[5]

c) Public Interest Criteria 4003 – Foreign relations

Public interest criteria 4003 requires that the applicant is not determined by the Foreign Minister, or a person authorised by the Foreign Minister, to be a person whose presence in Australia is, or would be, contrary to Australia's foreign policy interests or may be directly or indirectly associated with the proliferation of weapons of mass destruction.

d) National interests

If the Minister of Immigration and Citizenship, acting personally, intends to make a decision to refuse to grant a protection visa relying on one or more of Articles 1F, 32 or 33(2) of the Refugees Convention and decides that, because of the seriousness of the circumstances giving rise to the making of that decision, it is in the national interest that the person be declared to be an excluded person, the Minister may, as part of the decision, include a certificate declaring the person to be an excluded person. [6]

[5] Section 4 Australian Security Intelligence Organisation Act 1979.
[6] Section 502 Migration Act 1958.

e) Where the applicant has a right of residence in another country other than Australia

If an applicant has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently, any country apart from Australia, including countries of which the applicant is a national, Australia is taken not to have protection obligations to that applicant.[7] However, there are exceptions to this requirement.

f) Where Australia has entered into a Safe Third Country agreement with another country

A non-citizen is unable to make a valid Application for a Protection Visa at a particular time if he or she is in Australia at that time and is covered by a Safe Third Country Agreement between Australia and another country.[8] However, the Minister of Immigration and Citizenship may determine that this does not apply if it is in the public interest to do so.

ii) The refugee decision

When an Application for a Protection Visa is received by DIAC and screened for eligibility, a delegate of the Minister of Immigration and Citizenship conducts a merits assessment of the claim. The delegate is an officer of DIAC who has been delegated authority by the Minister to make certain decisions.

The delegate may make a decision based on the documents. The delegate usually invites the applicant to attend an interview in more complex cases. Once a decision is made, the delegate must provide the applicant with a written decision and reasons for the decision.

The delegate is required to make a decision within 90 days of receipt of a valid Application for a Protection Visa or within 90 days of an application being remitted by the RRT or a court for reconsideration.[9]

iii) Appeal

Refugee Review Tribunal

An applicant may make an Application for Review to the RRT. The RRT cannot review a decision to refuse a protection visa relying on Article 1F, 32 or 33(2) of the Refugees Convention.[10] The review is a merits review (appeal) and involves a rehearing of the claim. There is no requirement for leave or permission to lodge the application.

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[7] Section 36(3) Migration Act 1958.
[8] Section 91E Migration Act 1958.
[9] Section 65A Migration Act 1958.
[10] Section 500(4) Migration Act 1958.

If the RRT is unable to make a decision favourable to the applicant on the material before it, the applicant is invited to appear before the RRT for a hearing.[11] The RRT may affirm the decision, vary the decision, remit the matter for reconsideration with directions or set aside the decision and substitute a new decision. The RRT must give written decisions and reasons in every case. The RRT is required to make a decision within 90 days of receiving documents from DIAC.[12]

Administrative Appeals Tribunal

An applicant may make an application for review to the AAT. Decisions reviewable by the AAT are decisions of the Minister of Immigration and Citizenship to deport non citizens who have lived in Australia for less than 10 years and who have been convicted of crimes, decisions to refuse to grant or to cancel a visa on character grounds or decisions to refuse to grant or to cancel a protection visa relying on one or more of Articles 1F, 32 or 33(2) of the Refugees Convention.[13]

iv) Judicial review

Federal Magistrates Court of Australia

An application for judicial review of a decision of the RRT may be made to the Federal Magistrates Court of Australia (FMC). There is no requirement for leave to do so and the application is solely on the grounds that there has been an error at law.

If the FMC finds that there has been a jurisdictional error, the application will be remitted to the RRT for a rehearing. If the FMC finds that there has been no jurisdictional error the application will be dismissed.

Federal Court of Australia

An appeal against a decision of the FMC may be made to the Federal Court of Australia (FC). There is no requirement for leave to do so. If the appeal is upheld, the FC will remit the application to the RRT for a rehearing. If it is not, the FC will dismiss the application.

High Court of Australia

An applicant who has been unsuccessful at the RRT may make an application direct to the High Court of Australia (HC). Alternatively, an applicant who has been unsuccessful at the FC may make an application to the HC. The application to the HC may only be made with leave of the court.

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[11] Section 425 Migration Act 1958.
[12] Section 414A Migration Act 1958.
[13] Section 500(1) Migration Act 1958.

Decisions of the Tribunals and the Courts in relation to applicants for protection visas cannot be published with the names of the applicants.[14]

3. Asylum Statistics

i) Annual refugee claims

Table 3.1: Annual refugee claims received by the Department of Immigration and Citizenship

Year	1998-99 *	1999-00 *	2000-01 *	2001-02 *	2002-03 *	2003-04 *	2004-05 *	2005-06 *	2006-07 *
Number of initial applications for protection visas received	8,257					3,567	3,105	3,300	3,743

* These dates are for the financial year 30 June to 1 July.

Source: Department of Immigration and Citizenship Annual Reports 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

Table 3.2: Applications for Review lodged at the Refugee Review Tribunal

Year	1998-99 *	1999-00 *	2000-01 *	2001-02 *	2002-03 *	2003-04*	2004-05*	2005-06*	2006-07 *
Number of applications lodged		6,133	6,661	4,929	4,877	3,344	2,911	3,021	2,835

* These dates are for the financial year 30 June to 1 July.

Source: Refugee Review Tribunal Annual Reports 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

ii) Acceptance rates

Table 3.3: Number of protection visas granted by the Department of Immigration and Citizenship excluding humanitarian visas granted

Year	1998-99 *	1999-00 *	2000-01 *	2001-02 *	2002-03 *	2003-04 *	2004-05 *	2005-06 *	2006-07 *
Number of									

[14] Section 91X Migration Act 1958.

protection visas granted (not including humanitarian visas granted)	1,726	5,500	842	3,860	874	1896	922 (TPV)** 3,679 (PPV)***	1,255 (TPV)** 3,936 (PPV)***	1,699 (TPV)** 523 (PPV)***

* These dates are for the financial year 30 June to 1 July.
** TPV- Temporary Protection Visas
*** PPV – Permanent Protection Visas

Source: Department of Immigration and Citizenship Annual Reports 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

Table 3.4: Acceptance rates at the Refugee Review Tribunal

Year	1998-99 *	1999-00 *	2000-01 *	2001-02 *	2002-03 *	2003-04 *	2004-05 *	2005-06 *	2006-07 *
Percentage of primary decisions set aside	8.58 %	9.12 %	11%	13%	6%	13%	13%	30%	21%

* These dates are for the financial year 30 June to 1 July.

Source: Refugee Review Tribunal Annual Reports 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

4. Detention

i) Grounds for detention of asylum seekers

Australia has a policy to detain non-citizens who enter Australia illegally. Mandatory detention was first legislated into Australian immigration law in May 1992. The legislation imposed a 273 day limit on detention. In 1994 the legislation was amended to broaden the application of mandatory detention and to remove the 273 day limit. This laid the foundation for the detention of illegal non-citizens, including asylum seekers, for unspecified and prolonged periods of time.

Mandatory detention was a very controversial policy and had been the subject of considerable criticism both nationally and internationally. The UN Human Rights Committee had consistently found that Australia's mandatory detention scheme breached basic human rights standards. Other international and Australian agencies had also

repeatedly expressed grave concerns about a number of aspects of Australia's mandatory detention scheme.

In 2002 the detainees at the Woomera Detention Centre protested and rioted. This incident attracted intense media publicity and resulted in increased public awareness and scrutiny of the issue of mandatory detention and the detention of minors.

In 2004 a number of cases challenging the mandatory detention regime went before the High Court of Australia (HC). Controversially, the HC found that mandatory detention, including the detention of minors, was valid under the legislation.

In 2004 the Human Rights and Equal Opportunity Commission (HREOC) released a comprehensive Report on the mandatory detention of minors.[15] This Report generated considerable media publicity and intense criticism of the policy of mandatory detention and the detention of minors in particular. In 2005 the release of the Palmer Report [16]and the Comrie Report [17] highlighted serious deficiencies in the detention system.

This consistent and increasing criticism prompted a group of politicians to press for some important changes to the detention scheme particularly as it affected minors. As a result, in 2005 a number of significant changes were introduced and led to the release of most minors from detention. The legislation was amended to provide that minors were only to be detained as a measure of last resort. [18]

Some of the other changes introduced in 2005 were the requirement for primary decisions to be made by DIAC within 90 days, the requirement for the RRT to conduct a merits review within 90 days and the issue of Removal Pending Bridging Visas. This visa was introduced to enable the release, pending removal, of people in immigration detention who have been cooperating with efforts to remove them from Australia but whose removal was not reasonably practicable at that time.

Another change introduced in 2005 was the requirement for the Secretary of DIAC to report to the Commonwealth Ombudsman on persons who had been in detention for more than 2 years.[19] The Commonwealth Ombudsman was required to give the Minister an assessment of detention arrangements.[20] The Commonwealth Ombudsman's Report and recommendations were to be tabled in Parliament.[21] The discretionary powers of the Minister of Immigration and Citizenship to grant visas were also extended.

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[15] *A Last Resort? National Inquiry into Children in Immigration Detention (2004),* Report by the Human Rights and Equal Opportunity Commission.
[16] Mick J Palmer (2005) *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report.* Department of Immigration, Multicultural and Indigenous Affairs, Canberra.
[17] Nigel Comrie (2005) *Inquiry into the Circumstances of the Vivian Alvarez matter*. Commonwealth Ombudsman, Canberra.
[18] Section 4AA Migration Act 1958.
[19] Section 486N Migration Act 1958.
[20] Section 486O Migration Act 1958.
[21] Section 486P Migration Act 1958.

There was a change of government in Australia in November 2007. Thereafter there were a number of significant changes in Australia's immigration policy and legislation. These changes included the closure of the Nauru and Manus Island detention centres and the review of long term detention cases.

In May 2008 the Joint Standing Committee on Migration commenced an *Inquiry into Immigration Detention in Australia*. In July 2008 the Minister of Immigration and Citizenship announced some key changes to the detention scheme. The new detention policy and practices are to be guided by seven values as set out in the *New Values in Immigration Detention*. DIAC is also required to justify why a decision to detain is made.

Under the new guidelines mandatory detention remains a component of Australia's border control policy. However, its scope is much more limited in terms of its application, the length of detention and the conditions of detention. Detention is to be used as a measure of last resort and for the shortest possible time.

Three groups of people will be subject to mandatory detention. The first group is unauthorized arrivals who will be initially detained to be screened for identity, health and security risks and released upon successful completion of this task. The second group is unlawful non-citizens who present unacceptable risks to the community and the third group is unlawful non-citizens who have repeatedly refused to comply with their visa conditions

ii) Detention statistics

During the financial year 30 June 2000 to 1 July 2001 a total of 11,439 people were detained at some time during the year. The maximum number detained on any day was 3,612. *

During the financial year 30 June 2001 to 1 July 2002 a total of 10,897 people were detained at some time during the year. The maximum number detained on any day was 3,667. *

During the financial year 30 June 2002 to 1 July 2003 a total of 7,934 people were detained at some time during the year. The maximum number detained on any day was 1,409. As at 30 June 2003 there were 11 detainees who had applied for a protection visa and were awaiting a primary decision.

During the financial year 30 June 2003 to 1 July 2004 a total of 7,492 people were detained at some time during the year. The maximum number detained on any day was 1,263. As at 30 June 2004 there were 16 detainees who had applied for a protection visa and were awaiting a primary decision.

During the financial year 30 June 2004 to 1 July 2005 a total of 8,587 people were detained at some time during the year. The maximum number detained on any day was

1,154. As at 30 June 2005 there were 28 detainees who had applied for a protection visa and were awaiting a primary decision.

During the financial year 30 June 2005 to 1 July 2006 a total of 7,375 people were detained at some time during the year. The maximum number detained on any day was 1,015. As at 30 June 2006 there were 25 detainees who had applied for a protection visa and were awaiting a primary decision.

During the financial year 30 June 2006 to 1 July 2007a total of 5,485 people were detained at some time during the year. The maximum number detained on any day was 847. As at 30 June 2007 there were 19 detainees who had applied for a protection visa and were awaiting a primary decision.

* These are figures for all persons detained for immigration purposes including those who have made an Application for a Protection Visa.

Source: Department of Immigration and Citizenship Annual Reports 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

iii) Detention conditions

DIAC has contracted the provision of all immigration detention services to a private company. The contract between the Australian government and the service provider requires the service provider to deliver detention services in accordance with the *Immigration Detention Standards* and its performance is measured against these *Standards*.

The Commonwealth Ombudsman has the power to investigate the actions of the service provider. This can be done on its own motion or upon receipt of complaints from immigration detainees. During the 1990s and early 2000s a number of investigations were conducted and reports prepared on the conditions in Immigration Detention Centers.

HREOC investigated and reported on the detention of illegal non-citizens between January 1996 and June 1997.This Report generated considerable media publicity and resulted in increased external scrutiny of Immigration Detention Centres. The Joint Standing Committee on Migration also undertook several inquiries into immigration detention practices in Australia and made recommendations.

The Commonwealth Ombudsman investigated and reported on the actions of the service provider in the management of the Immigration Detention Centres. However, critics argued that this was not an adequate means of monitoring immigration detention conditions for compliance with international human rights standards.

Notwithstanding the above, there were many complaints and criticisms about the conditions in Immigration Detention Centres. In 2002 the detention conditions were highlighted when the detainees at the Woomera Detention Centre protested and rioted.

Since then a number of Immigration Detention Centres, including the Woomera Detention Centre, have been closed and the numbers of people in immigration detention has decreased considerably.

There are currently three types of immigration detention facilities for people who have been detained. They are Immigration Detention Centres, Immigration Residential Housing and Immigration Transit Accommodation. Immigration Detention Centres accommodate a range of unlawful non-citizens, mainly people who have over-stayed their visas, people in breach of their visa conditions, or people who were refused entry at Australia's international airports.

Immigration Residential Housing provides a flexible detention arrangement to enable people in immigration detention to live in family-style accommodation. Immigration Transit Accommodation is accommodation to house people who are a low security risk.

5. State Support for Refugee Claimants

Under the Refugees Convention every signatory country has fundamental obligations in regard to the rights of refugees. These rights include access to courts of law, employment, housing, public education and financial support. Australia partially complies with its obligations under the Refugees Convention.

In November 2007 a new Labour government was elected in Australia. Since then there has been a review of State support provided for refugee claimants and policies in this regard. Several changes have been implemented or are in the process of being implemented. In May 2009 the Minister of Immigration and Citizenship announced the allocation in the Department's 2009-2010 budget for increased support services for the Department's clients.

These proposed support services include the provision of increased health and welfare support, immigration advice and assistance to vulnerable applicants with exceptional circumstances, more flexible work rights for asylum seekers, the introduction of a national Community Status Resolution Service to assist applicants who require some intervention to resolve their cases and the provision of an assisted voluntary return service to facilitate unsuccessful asylum seekers' departure from Australia without the need for detention.

i) Employment

With the exception of people detained as unauthorized arrivals, protection visa applicants are granted Bridging Visas that allow them to remain lawfully in the community until their applications are finalized. However, Bridging Visas cease if protection visa applicants seek review of a decision of DIAC or judicial review of a decision of the RRT. Protection visa applicants must apply for another Bridging Visa to maintain their lawful status for the duration of the review and judicial review.

A Bridging Visa may have unrestricted, restricted or no work rights depending on individual circumstances. If protection visa applicants hold a valid visa, for example a visitor visa or a student visa, when they make the protection visa application, they must abide by either the work rights or restrictions attached to that visa until it has expired. Under the previous government's policy, no work rights were available to applicants who had been in Australia for 45 days or more in the 12 months before their protection visa applications were made. They were only granted a Bridging Visa with a 'no work' condition attached.

Work rights were only available to protection visa applicants affected by the 45 day rule if they held a Bridging Visa A, a primary decision on their protection visa application had not been made by DIAC within 6 months and they could demonstrate a compelling need to work or they were a member of a class of persons specified by Gazette Notice.

The abovementioned restrictions on the rights of asylum seekers to work in Australia were in place until 2009. In May 2009 the Minister of Immigration and Citizenship announced the introduction of more flexible work rights for asylum seekers including the abolishing of the "45 day rule." These changes came into effect on 1 July 2009.

Under the changes that came into effect on 1 July 2009 permission to work will generally be made available to protection visa applicants and applicants for humanitarian visas who remain lawful, meet time limits and actively engage with DIAC to resolve their immigration status.

ii) Financial assistance

The Australian federal government provides financial support to asylum seekers under the Asylum Seeker Assistance Scheme. To be eligible under the Asylum Seeker Assistance Scheme, asylum seekers must be in financial hardship and have lodged a valid Application for a Protection Visa for more than 6 months, not be in detention, must hold a Bridging or other visa, not be eligible for either Australian or overseas government income support and not be the spouse, de facto/common law spouse or sponsored fiancé (e) of a permanent resident. There are exemptions from these criteria.

Asylum Seeker Assistance payments cease upon the grant of a protection visa or 28 days after notification that a protection visa application has been refused by DIAC. There are exemptions from these criteria.

iii) Public housing

In most Australian States and Territories a person must be an Australian citizen or permanent resident to qualify for public housing. In the State of Queensland public housing is available for holders of TPVs or holders of Bridging Visas if they had previously held a TPV that has expired.

iv) Education

Unaccompanied minors or children whose parents have made an Application for a Protection Visa, who are in the community or in community detention, have access to primary and secondary schooling as well as access to English language classes. Informal community based education for adults is also supported.

v) Health care

To be eligible for Medicare, the Australian government's health insurance scheme, asylum seekers must have an unfinalised application for a permanent visa and hold a valid visa with work rights in force. Asylum Seeker Assistance recipients who do not have access to Medicare can receive assistance with health care costs. Asylum Seeker Assistance recipients can also be referred to counselling services.

The abovementioned restrictions on the rights of asylum seekers to health care in Australia were in place until 2009. In May 2009 the Minister of Immigration and Citizenship announced the introduction of increased health care rights for asylum seekers. These changes came into effect on 1 July 2009.

vi) Legal services

Legal services are available to all asylum seekers in immigration detention and to the most disadvantaged visa applicants living in the community. A 'disadvantaged person' is someone who is in financial hardship and disadvantaged due to their non English speaking background, youth, cultural issues such as gender barriers preventing assistance, illiteracy in the main language of their country of origin, remote location, physical or psychological disability including from past torture and trauma or physical or psychological harm resulting from family violence.

This service is known as the Immigration Advice and Application Assistance Scheme. (IAAAS). It is a free service and provides professional assistance such as immigration advice to prospective visa applicants and sponsors, help with the completion and submission of visa applications, liaison with DIAC and advice on complex immigration matters. IAAAS providers are not employed by DIAC and offer independent immigration assistance and advice.

Eligibility for IAAAS funded assistance ceases whenever a client has been found, both by DIAC and by the relevant review tribunal, not to meet the criteria for the grant of the visa for which they have applied. IAAS is not available to persons seeking judicial review or to those requesting Ministerial intervention.

6. Removal of Refused Asylum Seekers

Once applicants have exhausted all judicial processes, they are required to leave Australia within 28 days. If they fail to do so they may be removed from Australia.[22] The Minister of Immigration and Citizenship may make orders for the deportation of non-citizens who have been in Australia for less than 10 years and have been convicted of crimes, deportation of non-citizens upon security grounds or deportation of non-citizens who are convicted of certain serious offences.[23]

Table 6.1 Removals:

Year	2000-01 *	2001-02 *	2002-03 *	2003-04 *	2004-05 *	2005-06 *	2006-07 *
Number of Removals, Supervised and Monitored Departures	9,523	10,894	13,878	12,689	12,524	10,501	9,489

* These dates are for the financial year 30 June to 1 July.
These figures relate to all removals, not just to failed asylum seekers.

Source: Department of Immigration and Citizenship Annual Reports 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

7. Access to Asylum

i) Interdiction

The incident involving the *MV Tampa* on 29 August 2001 was the first incident of interdiction at sea by the Australian government. Following this incident Australia introduced legislation in September 2001 to implement a new policy known as the 'Pacific Solution'.[24] The 'Pacific Solution' involved the excision or removal of a number of islands and Australian off shore resource and sea installations off the north coast of Australia, which were within Australian territory, from Australia's migration zone. This meant that asylum seekers who arrived at these excised off shore places were prevented from making a valid Application for a Protection Visa or any other visa for Australia. They could also be removed to a third country where they were detained and any claims they made were processed.

As part of the 'Pacific Solution' the Australian government entered into agreements with the governments of Nauru and Papua New Guinea to set up Immigration Detention

[22] Section 198 Migration Act 1958.
[23] Section 200 Migration Act 1958.
[24] Migration Amendment (Excision from Migration Zone) Act 2001 and Migration Amendment (Excision from Migration Zone) (Consequential Provisions Act) 2001.

Centres in Nauru and on Manus Island in Papua New Guinea. Unauthorised boat arrivals at the excised off shore places were thereafter removed to Immigration Detention Centers in Nauru and Manus Island where their claims were processed. The International Organization for Migration was engaged to operate the facilities in Nauru and on Manus Island.

Legislation was also passed to give the Australian government power to remove any ship in the territorial waters of Australia and use reasonable force to do so.[25] It also provided that any person who was on the ship could be forcibly returned to the ship and that no asylum application could be made by people on board the ship. This legislation has been used to prevent ships entering into Australian territorial waters and remove ships from Australian territorial waters.

In November 2007 a new Labour government was elected in Australia. This government abolished the 'Pacific Solution' and closed down the Immigration Detention Centres in Nauru and on Manus Island.

ii) Eligibility Screening

The eligibility screening process was described above in Part 2 – The Asylum Process. This section provides more details in relation to the filing of more than one Application for a Protection Visa.

The legislation provides that a non-citizen refused a protection visa may not make further application for a protection visa.[26] However, if the Minister of Immigration and Citizenship thinks that it is in the public interest to do so, the Minister may determine that this provision does not apply to prevent an Application for a Protection Visa being made by the non citizen. This power must be exercised by the Minister personally.[27]

If a non citizen is given leave to file a further Application for a Protection Visa, the Minister of Immigration and Citizenship, when considering the further application, is not required to reconsider any information considered in an earlier application and have regard to, and take to be correct, any decision that the Minister made about or because of that information.[28]

iii) Right of Residence in Another Country Screening

The right of residence in another country other than Australia screening process was described above in Part 2 – The Asylum Process.

[25] The Border Protection Act 2001.
[26] Section 48A Migration Act 1958.
[27] Section 48B Migration Act 1958.
[28] Section 50 Migration Act 1958.

iv) Safe Third Country Screening

The safe third country screening process was described above in Part 2 – The Asylum Process.

8. Legislative Authorities

In Australia asylum procedures are centralized under one statute, the *Migration Act 1958* and the *Migration Regulations 1994* which have been subject to numerous amendments since their inception.

Migration Act 1958
http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/

Migration Regulations 1994
http://www.austlii.edu.au/au/legis/cth/consol_reg/mr1994227/

The legislation referred to in this paper is current as at 5 August 2009.