

THE CHALLENGE OF REFUGEE PROTECTION:

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Australia's treatment of asylum seekers and refugees has come under close scrutiny since the introduction of the Temporary Protection Visas in 1999.

There is generally great passion but, unfortunately, limited balance in the public debate on these matters. Critical issues are too often viewed narrowly and out of context – with little appreciation of the global context within which today's humanitarian crises occur.

Australia was one of the first countries to sign the 1951 Convention on the Status of Refugees and remains committed to the implementation of the Convention and its 1967 Protocol.

Australia has provided refuge and support to more than 600,000 refugee and humanitarian settlers since the end of the second world war and continues to provide the opportunity for 12,000 people to come to Australia under our Refugee and Humanitarian Program each year.

Australia's multicultural society has ensured that refugees from all parts of the world can settle in Australia with safety and dignity.

Australia continues to work with the UNHCR and other countries to ensure that the international protection system delivers durable solutions in a timely, efficient and fair manner, to those refugees who need them.

Constraints and competing priorities are a fact of life. There are limits to the resources governments have at their disposal and hard choices have to be made. There will always be some disagreement between various parties as to where limits should be set but there is no doubt that the capacity of Australia, or indeed of any country, is not unlimited.

Using the Refugee Convention definition there are already 12 million refugees in the world, with another 11 million people of concern identified by the UNHCR. Australia can't help them all, but we do demonstrate every year that we will continue our efforts to assist those most in need.

Every element of our international strategy should be managed according to the resource limits within which it is set – including the provision of resettlement places as a durable solution for refugees. No one could reasonably expect any country's offer of resettlement places to be open-ended.

Having decided the scope of how Australia will participate in the international humanitarian effort and having allocated generous resources, the Government must make a third set of decisions before implementing its policies and programs. Who will be the recipients?

The intended recipients of resettlement places in Australia's programs are chosen from those for whom there is no alternative. Australia's offshore Humanitarian Program targets refugees and people in humanitarian need who cannot go home and who cannot be integrated in their country of first asylum – refugees with no resources to hire a people smuggler and whose desperate voices are the first ignored in much of the public debate.

Importantly also, being a refugee does not entitle a person to resettlement in another country, nor do all refugees in countries of first asylum actually need resettlement.

Globally, resettlement places are limited – only about 110,000 per year are available in a handful of resettlement countries.

Governments and the UNHCR must decide who gets a resettlement place. This cannot be a self-selection exercise, nor can it be left to people smugglers to decide.

Only by retaining control of the system of international protection, including determining which refugees are in need of resettlement, can the international community ensure that the finite collective resources of governments are allocated effectively and efficiently.

Why temporary protection?

Australia's protection obligations under the Refugees Convention require the onshore component to take priority over the offshore component when it comes to the use of these places. Accordingly, any increase in the number of people who arrive in Australia and engage its protection obligations translates to a decrease in the number of resettlement places that Australia can offer to people waiting overseas.

Between 1998 and 2001, the number of unauthorised people arriving by boat from rose from around 900 to the order of 4000, with no sign of this increase abating. Most of these unauthorised arrivals were refugees or asylum seekers who were either abandoning effective protection that they already enjoyed, often for long periods, in a country of first asylum, or were bypassing opportunities to seek and obtain protection in countries closer to their homelands.

By travelling to Australia, these persons were using, and being exploited by, a growing network of people smuggling organisations which specialise in undermining the laws and border controls of countries of transit and countries of destination.

These criminal organisations are motivated by greed and the tragic deaths which have occurred around the world as a result of people smuggling are testament to the people-smugglers' callous disregard for human life.

While refugees have a right to protection, they do not have the right to choose the country that provides the protection, or a right to enter any country without permission, or to obtain permanent residence in that country. Article 31 of the Refugees Convention makes explicit provision for the treatment of refugees who arrive "unlawfully" in signatory States and, in particular, those refugees who do not have "good cause for their illegal entry or presence."

The Convention drafters clearly intended that document to preserve the capacity of states to manage collective responses to refugee crises. They recognised that the challenges posed by the needs of millions of refugees could not accommodate a system where individuals could pick and choose their preferred destination and move on unnecessarily. In particular, in the current context the unnecessary, secondary movement of people to desirable countries such as Australia directly undermines the ability of countries to distribute resettlement places to UNHCR-coordinated efforts to provide resettlement places on the basis of need.

Secondary flows disadvantage the resettlement prospects of those refugees who may be in equal or greater relative need of assistance, including those residing in refugee camps and those who do not have the financial resources to pay people smugglers.

What this comes down to is whether States should abandon attempts to help people on the basis of their need for resettlement places and, instead, protect only those who are healthy enough, lucky enough or wealthy enough to organise their travel to Australia. It is worth noting that the UNHCR has indicated that some 50 per cent of refugees in the world are women and 50 per cent of all persons of concern to the UNHCR are children, however, less than 30 per cent of those arriving unlawfully in Australia are women and children.

The introduction in October 1999 of the temporary protection visa (TPV) for unauthorised arrivals found to be owed protection kept in place the fundamental arrangements needed to meet our international refugee obligations. The changes removed the additional benefits that had been encouraging the misuse of the protection process by unauthorised arrivals and the use of people smugglers to assist people to travel unlawfully to Australia.

What the TPV confers

Unauthorised arrivals found to be refugees have access to a three-year temporary protection visa only, in the first instance. Holders of the visa are protected against being returned to their homeland and can apply for further protection after 30 months if their need for protection is continuing.

Holders of temporary protection visas are:

- able to work and receive Job Matching from Centrelink;
- eligible for Special Benefit, Family Tax Benefit, Child care Benefit, Double Orphan Pension, Maternity Allowance and Maternity Immunisation Allowance;
- able to gain access to Medicare benefits;
- eligible for referral to the early health assessment and intervention program;
- eligible for torture and trauma counselling; and

- able to apply for a Protection visa which may be granted after a period of 30 months, or a shorter period if specified by the Minister, if there is a continuing need for protection;
- TPV Minors are also eligible for the Commonwealth-funded English as a Second Language – New Arrivals program to assist their participation in school classroom activities.

TPVs and family reunification

The Refugee Convention imposes no obligation to provide for the reunification of family members – each family member must demonstrate that they are owed protection and be granted refugee status in their own right. However States have the discretion to allow family members to remain with or be reunified with a person found to be a refugee by that State.

Longstanding arrangements in Australia allow family members arriving together to remain in Australia together, even if only one is found to be a refugee. Where family members arrive and apply for protection separately, they are assessed according to the Refugee Convention definition of a refugee. If they have no personal grounds for refugee protection it is expected that they depart Australia.

Australia's other work to assist refugees

Australia's TPV arrangements are one element of Australia's broad strategy to assist UNHCR to resettle refugees on a basis of need, including:

- preventing the misuse of the refugee determination processes and growth of people smuggling by people merely seeking a migration outcome;
- supporting countries of first asylum who are often providing temporary protection to large numbers of refugees; and
- addressing the core problems which lead to the creation of refugees in the first place.

Australia is active in supporting and developing international efforts, working closely with the UNHCR, other international agencies and countries to address each of these issues.

In addition to providing formal resettlement places for refugees, Australia is a major contributor to the UNHCR, and a regular supporter of programs of the UNHCR, World Food Program, UNICEF and other international organisations in a range of refugee crisis areas of the world. Since September 2001 the Australian government has committed in the order of \$50m to address the problems faced by refugees from Afghanistan, Iraq and other countries.

Conclusion

Australia has an enviable record of achievement in assisting those in humanitarian need.

Our desire to ensure the integrity of Australia's borders and the right to decide who should and should not enter Australia in no way diminishes our commitment to providing humanitarian assistance to help those most in need.

Because of the success of our border management policies more offshore resettlement places are available so more people, who don't have the money to pay a people smuggler, will be able to come to Australia.

Only by retaining control of the system of international protection, including determining which refugees are in need of resettlement, can the international community ensure that the finite collective resources of governments are allocated effectively and efficiently.

Australia will continue to meet its obligations under the Refugees Convention but working within this framework with such strategies as the TPV we will continue to focus efforts on protecting those most in need.

Further information is available through the Internet on

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

Fact Sheets web site

Questions and Answers web site

The Department also operates a national telephone inquiry line on 131 881 for the cost of a local call anywhere in Australia.