PARLIAMENTARY
LIBRARY
INFORMATION · ANALYSIS · ADVICE

RESEARCH PAPER

A comparison of Coalition and Labor government asylum policies in Australia since 2001

Janet Phillips

Social Policy Section

Executive summary

- Both Coalition and Labor governments have adopted and maintained a variety of border protection and anti-people smuggling measures in response to several waves of asylum seekers arriving unauthorised in Australian waters by boat since 2001.

- Both major parties are in general agreement on many of the key measures that have been put in place to deal with these issues. This includes mandatory detention for unauthorised boat arrivals introduced in the 1990s by the Keating (Labor) Government, and offshore processing arrangements in the Pacific first introduced by the Howard (Coalition) Government in 2001.

- However, there are some policy differences, in particular whether asylum seekers should be offered temporary or permanent protection and what size Australia's formal annual intake of refugees and other humanitarian entrants should be.

- An Expert Panel on Asylum Seekers was established in 2012 to advise the Australian Government on 'the best way forward' to address these issues. Subsequently, the Panel noted that there 'were no quick or simple solutions' but argued for an integrated set of short-term and long-term proposals. The short-term proposals included both disincentives (such as the re-introduction of an offshore processing regime) and incentives (such as an immediate increase in Australia's Humanitarian Program). Long-term proposals included recommendations that the Government create better migration pathways and protection opportunities for refugees coordinated within an 'enhanced regional cooperation framework'.

- Many stakeholders favour a similar approach and have urged the Australian Government to work towards creating better protection opportunities for refugees in the region under a variety of burden-sharing arrangements. It is argued that this could be negotiated within existing regional cooperative arrangements such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.

- Over recent years many short-term deterrence measures have been introduced by both Labor and Coalition governments, but many more long-term incentives or proposals along the lines of those recommended by the Expert Panel have largely not been pursued or are yet to come to fruition.

- While many argue that Australia's annual humanitarian intake is relatively generous, the magnitude of the issues arising from the growing number of people seeking protection globally is daunting and poses huge challenges to all the destination countries, including Australia. Many stakeholders argue that one of the biggest challenges for the government of any destination country is to develop asylum policy that focuses on international, not domestic, concerns and offers sustainable long-term solutions.

Contents

Note: all links in this paper were accessed as of 18 January 2017.

Introduction

It has been four decades since the first boats carrying Indochinese asylum seekers arrived on Australia's shores.[1] Since then public perceptions or concerns over unauthorised maritime arrivals continue to strongly influence government policy and to be an emotive and divisive political issue.

While the numbers have fluctuated over the years, there was a significant rise in unauthorised arrivals between 2008 and 2013. This placed more pressure on both Coalition and Labor governments to adopt and maintain measures that were seen to address border security concerns, combat people smuggling and 'stop the boats'.[2] In response to these pressures, governments from both major parties have supported increasingly severe deterrence measures in an attempt to reduce the number of unauthorised maritime arrivals (UMAs).[3]

Given that there is bipartisan support for several of the Government's current deterrence measures (such as offshore processing in the Pacific) it could be argued that the policy differences between the two major parties are minimal. In fact, there has been bi-partisan support for most of the policy responses and deterrence measures developed by successive Labor and Coalition governments since the 1970s, including the introduction of mandatory detention for all boat arrivals by the Keating (Labor) Government in 1991.

The Expert Panel on Asylum Seekers established in 2012 to advise the Australian Government on 'the best way forward', acknowledged the complexities of the issues arising from the arrival of asylum seekers by boat, noting that there 'were no quick or simple solutions'.[4]

The Panel argued for an integrated suite of short-term and long-term proposals that included deterrence measures such as the re-introduction of an offshore processing regime. Long-term non-deterrence proposals included recommendations that the Government create better migration pathways and protection opportunities for refugees coordinated within an 'enhanced regional cooperation framework'.

However, to date many long-term proposals along the lines of those recommended by the Panel have not been pursued by either of the major parties. It is argued that without long-term effective mechanisms in place, perceptions of 'good refugees' and 'bad refugees' will continue to be 'pitted against one another' in the public debate.[5]

This paper provides a comparison of key Labor and Coalition asylum policies since 2001 when the Howard (Coalition) Government first introduced the practice of offshore processing to deal with previous waves of boat arrivals. It includes an overview of the recommendations made by the Expert Panel on Asylum Seekers in 2012 and analysis by experts in the field regarding the policy alternatives. A summary of the key policy similarities and differences is provided in an appendix.

Policy similarities

Both of the major parties believe that tough deterrence measures are necessary to stem the flow of asylum seeker boats to Australia. In particular, both parties currently support the practice of transferring asylum seekers who have arrived by boat to offshore processing centres in Papua New Guinea (PNG) and Nauru; the practice of mandatorily detaining all unauthorised maritime arrivals; and the need to maintain tough anti-people smuggling and border protection measures in cooperation with neighbouring countries in the region. In 2015, Labor also softened its opposition to boat 'turnbacks' and conceded that 'provided it can be done so safely, a future Labor Government will retain the option of turning boats around'.[6]

Although the Rudd (Labor) Government initially disbanded the Howard Government's 'Pacific Solution' in 2008, Australia's offshore processing regime was reinstated by the Gillard (Labor) Government in 2010 and further

1. J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, Research paper series, 2013–14, Parliamentary Library, Canberra, 23 July 2013; and J Phillips, *Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics*, Research paper series, 2016–17, Parliamentary Library, Canberra, 2017.
2. J Phillips, *Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics*, op. cit.
3. In this paper asylum seekers arriving by boat will be referred to as 'boat arrivals' or more formally as 'unauthorised maritime arrivals' as defined under the *Migration Act 1958* (Cth), section 5AA.
4. Expert Panel on Asylum Seekers, *Report of the Expert Panel on Asylum Seekers*, Canberra, August 2012.
5. J McAdam, 'Australia and asylum seekers', *International Journal of Refugee Law*, 25(3), 1 October 2013, pp. 435–48; and D Corlett, 'Who's jumping the queue? Fairness and the asylum seeker debate', in B Douglas and J Wodak (eds), *Refugees and asylum seekers: finding a better way*, Australia21 Ltd. website, December 2013.
6. Australian Labor Party (ALP), *A humane and compassionate approach to asylum seekers*, Australian Labor Party policy document, Labor (ALP) website.

toughened by the Rudd Government in 2013 in response to a rise in boat arrivals. As a result, it is true to say that both Labor and the Coalition support the following deterrence-focused measures and policies currently in place in Australia.

Offshore processing

In September 2001 the Howard Government introduced the concept of third country offshore processing through the Migration Amendment (Excision from the Migration Zone) Bill 2001.[7] This excised Christmas, Ashmore, Cartier and Cocos (Keeling) Islands from the migration zone for specific migration purposes in order to discourage unlawful (without a valid visa) non-citizens from arriving unauthorised on Australia's shores by boat.

The excision regime was introduced with the support of both major political parties.[8] The amendment meant that any unauthorised maritime arrivals at an excised offshore place were barred from making valid visa applications unless the Immigration Minister determined that it was in the public interest to permit them to do so and 'lifted the bar'.

Unauthorised boat arrivals after that point were intercepted at sea and either returned to Indonesia (commonly referred to as boat 'turnbacks' or 'turnarounds') or removed to third countries in the Pacific (either Nauru or Manus Island in PNG). Any claims made by those people for refugee status could then be processed outside the jurisdiction of Australian courts, with no guarantee of a resettlement place in Australia. This practice became colloquially known as the 'Pacific Solution'. Under this regime a total of 1,637 people were detained in the Nauru and Manus Island offshore processing facilities from September 2001 to 2008.[9] Of these, 1,153 (70 per cent) were ultimately resettled to Australia or other countries.[10]

Although there was bipartisan support for the introduction of the excision regime, in December 2002 Labor released its refugee policy, *Protecting Australia and protecting the Australian way: Labor's policy on asylum seekers and refugees* which stated that the Nauru and Manus Island facilities were too costly and the Pacific Solution was unsustainable.[11] Subsequently, in the lead up to the 2007 election, Labor made it clear that it would 'end the so-called "Pacific Solution", with its huge cost to Australian taxpayers'.[12]

There were almost no boats arriving when the Rudd Government came to power at the end of 2007. Subsequently, on 8 February 2008 it was announced that the centres on Manus and Nauru would no longer be used and that any future unauthorised boat arrivals would be processed on Australian territory, largely on Christmas Island.[13]

However, in 2010, in response to rising numbers of boat arrivals, the Labor Government reversed this decision. In her first major policy speech in July 2010, Prime Minister Julia Gillard announced that the Labor Government had begun discussions with neighbouring countries over a proposal to re-establish 'a regional processing centre for the purpose of receiving and processing irregular entrants to the region'.[14] Throughout this period the Coalition also supported the reintroduction of an offshore processing regime, but favoured the reinstatement of a processing centre specifically on Nauru.[15]

The Gillard Government subsequently held discussions with a number of countries including East Timor, PNG, and Malaysia. On 25 July 2011, the Australian Government signed an asylum seeker transfer agreement with the Malaysian Government.[16] The Government also signed a Memorandum of Understanding (MOU) with the PNG

7. M Coombs, *Excisions from the migration zone: policy and practice*, Research note, 42, 2003–04, Parliamentary Library, Canberra, 1 March 2004.
8. K Beazley (Leader of the Opposition), 'Second reading speech: Migration Amendment (Excision from Migration Zone) Bill 2001 and cognate bills', House of Representatives, *Debates*, 19 September 2001.
9. J Phillips, *The 'Pacific Solution' revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island*, Background note, Parliamentary Library, Canberra, 4 September 2012.
10. C Evans (Minister for Immigration and Citizenship), *Last refugees leave Nauru*, media release, 8 February 2008.
11. Australian Labor Party, *Protecting Australia and protecting the Australian way: Labor's policy on asylum seekers and refugees*, Australian Labor Party policy document, December 2002.
12. Australian Labor Party, *Australian Labor Party National Platform and Constitution 2007*, Australian Labor Party policy document, 2007.
13. C Evans (Minister for Immigration and Citizenship), *Last refugees leave Nauru*, op. cit.
14. J Gillard (Prime Minister), *Moving Australia forward*, address to the Lowy Institute for International Policy, Sydney, 6 July 2010.
15. For example, see T Abbott (Leader of the Opposition), Joint doorstop interview, transcript, 7 July 2010.
16. H Spinks, *Australia-Malaysia asylum seeker transfer agreement*, FlagPost, Parliamentary Library blog, 27 July 2011.

Government on the possible transfer and assessment of certain asylum seekers to an offshore processing centre in Manus Province in August 2011.[17]

However, on 31 August 2011 the High Court found that the Immigration Minister's declaration of Malaysia as a country to which asylum seekers could be taken for processing was invalid under the *Migration Act* as Malaysia was not a party to the 1951 Refugees Convention and did not offer protection to, nor process, asylum seekers.[18] Although the Malaysian arrangement remained the Gillard Government's policy preference, without the support of the Coalition and the Greens for legislative amendment it was not possible to pursue this option.[19]

Offshore processing in Nauru and PNG was announced as an alternative in August 2012.[20] Prior to that moment the Labor Government had rejected Coalition pressure to reinstate Nauru as a viable alternative for offshore processing. It was rejected on the basis that it would cost too much and would not deter asylum seekers intent on travelling to Australia by boat as most would inevitably end up being resettled to Australia—as was the case under the 'Pacific Solution'.[21]

However, in response to a recommendation in the report by the Expert Panel on Asylum Seekers, the Government announced that offshore processing would be re-introduced at both locations. Certain asylum seekers would be selected for processing under a 'no advantage' principle. Although this principle was to be applied to all unauthorised arrivals, what this meant in practice was only ever explained in very general terms: a 'no advantage principle' would apply whereby 'irregular migrants gain no benefit by choosing to circumvent regular migration mechanisms'.[22]

On 29 August 2012, the Australian Government signed a MOU with the Government of Nauru and on 8 September 2012 the Government signed an updated MOU with the PNG Government.[23] The first transfer to Nauru was on 14 September 2012 and the first transfer to PNG was on 21 November 2012.[24]

The Gillard Government also extended the excision policy to include the mainland through the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012. This Bill sought to implement Recommendation 14 from the report by the Expert Panel on Asylum Seekers 2012 that all unauthorised maritime arrivals must have the same lawful status as those who arrive at 'excised offshore places', chiefly Christmas Island, Cocos (Keeling) Islands and Ashmore and Cartier Islands.[25] The Bill passed the Senate in May 2013.

In June 2013, Kevin Rudd was reinstated as Prime Minister and subsequently announced even tougher measures with the following significant changes to Australia's asylum seeker policy:

- all asylum seekers (not a selected few) who travelled to Australia by boat with no valid visa would be sent offshore for processing and resettlement

- those found to be refugees would not be resettled in Australia

- people found not to be refugees would be returned to their home country (or a country where they had a right of residence) or held in a transit facility indefinitely and

- Australian Federal Police would pay rewards of up to $200,000 for information leading to the arrest and conviction of people organising people smuggling ventures to Australia.[26]

---

17. C Bowen (Minister for Immigration and Citizenship), *Australia and Papua New Guinea sign MoU*, media release, 19 August 2011.

18. *Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship* (2011) 244 CLR 144, [2011] HCA 32.

19. E Karlsen, *Can Oakeshott's bill end the asylum impasse?*, FlagPost, Parliamentary Library blog, 16 March 2012.

20. J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), *Joint press conference*, transcript, 13 August 2012.

21. C Evans (Minister for Immigration and Citizenship), *Last refugees leave Nauru*, op. cit.

22. A Houston, *Report of the Expert Panel of Asylum Seekers released*, media release, 13 August 2012.

23. C Bowen (Minister for Immigration and Citizenship), *Australia signs Memorandum of Understanding with Nauru*, joint media release, 29 August 2012; and *Australia and Papua New Guinea sign updated memorandum of understanding*, joint media release, 8 September 2012.

24. C Bowen (Minister for Immigration and Citizenship), *First transfer to Papua New Guinea*, media release, 21 November 2012; *Nauru designated for regional processing*, media release, 10 September 2012; and *Asylum seeker transfer to Nauru*, transcript, 14 September 2012.

25. I McCluskey, *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012*, Bills digest, 84, 2012–13, Parliamentary Library, Canberra, 8 March 2013.

26. J Clare (Minister for Home Affairs), *$200,000 bounty on the head of local people smugglers*, joint media release, 21 July 2013; K Rudd (Prime Minister), *Australia and Papua New Guinea Regional Settlement Arrangement*, joint media release, 19 July 2013; and Department of Immigration and Citizenship (DIAC), 'Regional resettlement arrangements', archived from the DIAC website, July 2013.

So, under this policy all, not just some, asylum seekers who arrived by boat would be transferred to PNG for processing and if found to be refugees could also be resettled there. The Prime Minister made it clear that they would never be resettled in Australia. A similar agreement was later signed with the Government of Nauru in August 2013.[27]

Throughout the Gillard and Rudd governments, a primary focus of the Opposition was to assert that, if elected, a Coalition government would 'not allow illegal boat arrivals and people smugglers to either determine Australia's immigration programme or undermine the Australian people's confidence in the programme'.[28] Subsequently, during the 2013 election period the Coalition made it clear that offshore processing would remain under an Abbott Government and that a military-led, whole-of-government response, known as Operation Sovereign Borders, would be introduced to coordinate the Coalition's offshore processing and anti-people smuggling measures.[29]

With the election of the Coalition Government in September 2013, offshore processing (including the tougher measures introduced by the Rudd Government) remained firmly in place. As planned, under the new Abbott Government, Operation Sovereign Borders was introduced and Australia's third country processing regimes in PNG and Nauru continued to operate.[30]

Labor's continued support for offshore processing under the Coalition Government was confirmed in July 2015 in Labor's asylum seeker policy.[31] However, the policy criticised the lengthy processing times under the current regime and proposed independent oversight of Australian-funded offshore facilities by the Commonwealth Ombudsman (this stance was reinforced in Labor's 2016 election policy documents).[32]

In November 2015, the media reported that Labor MP, Melissa Parke, had put forward a motion to the Labor Caucus calling on the Government to close the offshore processing centres on Nauru and Manus Island unless conditions at the centres improved. An amended motion was passed calling on the Government to 'ensure the conditions of offshore detention meet with human rights standards and independent oversight or, if the Government is unable or unwilling to implement these standards, to close the centres on Manus Island and Nauru forthwith'. It also committed a future Labor Government to ensuring 'the conditions of offshore processing meet with human rights standards and negotiate with PNG and Nauru for independent oversight of these facilities and calls on the government to do the same'.[33]

In December 2015, the Shadow Minister for Immigration and Border Protection, Richard Marles, delivered a speech to the Sydney Institute reinforcing Labor's criticisms of processing delays in offshore processing centres and of the lack of resettlement options.[34] The speech noted that 'to really resolve the fate of the bulk of asylum seekers on Manus Island and Nauru there needs to be a credible third country option negotiated by the Australian Government' and 'Australia must redefine its relationship with the UNHCR. It is this which will bring our nation in from the cold and offer some sort of hope that sensible conversations can be had about the future of those asylum seekers and refugees on Nauru and Manus Island'.

At a United Nations Summit for Refugees and Migrants in September 2016, UN Member States adopted the *New York Declaration for Refugees and Migrants* which set out a new approach to responding to refugees through a Comprehensive Refugee Response Framework.[35] The Prime Minister, Malcolm Turnbull, attended the Summit and released a statement shortly afterwards outlining that Australia would 'participate in a US-led multilateral

27. K Rudd (Prime Minister), *New arrangement with Nauru Government*, joint media release, 3 August 2013.

28. Liberal Party of Australia and the Nationals, *Our plan: real solutions for all Australians – the direction, values and policy priorities of the next Coalition Government*, Coalition policy document, January 2013.

29. Liberal Party of Australia and the Nationals, *The Coalition's Operation Sovereign Borders policy*, Coalition policy document, Election 2013, July 2013.

30. T Abbott (Prime Minister), *Swearing-in of the new Coalition Government*, media release, 18 September 2013.

31. B Shorten (Leader of the Opposition) and R Marles (Shadow Minister for Immigration and Border Protection), *Labor's humane and compassionate asylum seeker policy*, media release, 25 July 2015; and ALP, *A humane and compassionate approach to asylum seekers*, op. cit.

32. ALP, *Immigration—mandatory reporting and more transparency*, ALP policy document, 2016 election.

33. S Anderson, 'Labor backs MP Melissa Parke's call to improve conditions at offshore immigration detention centres', ABC News Online, 10 November 2015.

34. R Marles (Shadow Minister for Immigration and Border Protection), *Offshore processing: the way forward*, speech to the Sydney Institute, 3 December 2015.

35. UN, Summit for Refugees and Migrants, 19 September 2016, UN website.

program to resettle refugees from Central America'.[36] The significance of this announcement was unclear, but many argued that this arrangement would lead to a refugee resettlement 'swap' with the US Government.[37]

In November 2016, the Prime Minister announced that the Australian Government had reached a third country resettlement agreement with the US Government for an unspecified number of refugees in Nauru and Manus Island (although is not clear whether this agreement will proceed under the Trump administration):

> The Australian Government has reached a further third country resettlement agreement for refugees currently in regional processing centres. Resettlement arrangements for those found to be refugees in Nauru and Manus Island already exist with Papua New Guinea and Cambodia. This further agreement is with the United States and it will not under any circumstance be available to any future illegal maritime arrivals (IMAs) to Australia.[38]

In summary, while Labor is critical of current processing delays and there have been minor policy differences over the years, both the Coalition and Labor remain strongly in support of the excision and offshore processing regimes originally introduced by the Howard Government.

Boat turnbacks

Until relatively recently, one notable policy difference between the two major parties centred on the practice of boat 'turnarounds' or 'turnbacks' as employed by the Howard Government. Before coming to power, the then Leader of the Opposition, Tony Abbott, insisted that within a week of taking office he would instruct the Australian Navy to turn boats back and prevent them from entering Australian waters or arriving onshore:

> Within a week of taking office, I would give new orders to the navy that, where it is safe to do so, under the usual chain-of-command procedures, based on the advice of commanders-on-the-spot, Indonesian flagged, Indonesian crewed and Indonesian home-ported vessels without lawful reason to be headed to Australia would be turned around and escorted back to Indonesian waters'.[39]

There were only ever a few instances of successful boat 'turnbacks' during the term of the Howard Government, due in part to the practical complexities involved.[40] However, Mr Abbott consistently made it clear on many occasions in the lead up to the 2013 election that turning boats around could again be an option 'in the right circumstances' under a Coalition Government.[41]

Not long after the Coalition formed Government in September 2013, the new Minister for Immigration and Border Protection, Scott Morrison, outlined his priorities to ensure people arrived in Australia 'the right way':

> And we are encouraging people to come the right way…People who wish to make a contribution to our nation, to our society and our economy from day one. They're the people we want to come. Disorderly immigration through illegal arrivals who violate the integrity of our migration programme damages community support and confidence in that programme.[42]

The Abbott Government promptly implemented its boat 'turnback' policy and the first boat was successfully turned around in December 2013.[43]

However, the Abbott Government initially refused to provide any information on whether there had been any successful 'on-water disruptions' or boat 'turnbacks', citing operational reasons.[44] In January 2014 Mr Abbott made the following media comments explaining the Government's position:

36. M Turnbull (Prime Minister), _Leaders' summit on refugees_, joint media release, 21 September 2016.
37. J Song, '_What do we know about the Central American refugee deal between the US and Australia?_', _Guardian_ (Australia), 25 November 2016.
38. M Turnbull (Prime Minister), _Refugee resettlement from regional processing centres_, joint media release, 13 November 2016.
39. T Abbott (Leader of the Opposition), _The Coalition's plan for more secure borders, address to the Institute of Public Affairs, Melbourne,_ speech, 27 April 2012.
40. Expert Panel on Asylum Seekers, _Report of the Expert Panel on Asylum Seekers_, Attachment 8, Canberra, August 2012, op. cit.
41. T Abbott (Leader of the Opposition), _Restoring sovereignty and control of our borders_, op. cit.; and Liberal Party of Australia and the Nationals, _Our plan: real solutions for all Australians – the direction, values and policy priorities of the next Coalition Government_, op. cit., p. 47.
42. S Morrison (Minister for Immigration and Border Protection), _Address to the Migration Institute of Australia national conference, Canberra,_ speech, 21 October 2013.
43. J Phillips, _Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics_, op. cit.
44. Senate Legal and Constitutional Affairs Legislation Committee, _Official committee Hansard_, 19 November 2013, pp. 71–2.

> If stopping the boats means being criticised because I'm not giving information that would be of use to people smugglers, so be it … If we were at war we wouldn't be giving out information that is of use to the enemy just because we might have an idle curiosity about it ourselves.[45]

However, on several occasions since the practice was reintroduced in December 2013, the Coalition Government has acknowledged that a number of boat 'turnbacks' have occurred.[46] For example, one Operation Sovereign Borders (OSB) update noted that 23 boats with 685 people on board had been turned back between December 2013 and December 2015.[47]

Some other details have also emerged since OSB was established, including confirmation that several (orange) lifeboats had been purchased 'to achieve the aims of Operation Sovereign Borders', presumably to assist with boat 'turnbacks'.[48] Other measures, such as a proposal canvassed in the lead up to the 2013 election to 'buy back' boats in Indonesia, do not appear to have been pursued.[49] During Senate Estimates in November 2013, the Commander of Operation Sovereign Borders Joint Agency Task Force, Lieutenant General Angus Campbell, made it clear that no boats had been purchased from Indonesia due to reluctance on the part of the Indonesian Government to pursue such an option for the foreseeable future.[50]

Although Labor did not support the Howard Government's policies to turn boats around, in the lead up to the 2007 election the then leader of the Opposition, Kevin Rudd, asserted that a Labor Government would be prepared to consider turning seaworthy vessels back:

> You'd turn them back … Deterrence is effective through the detention system but also your preparedness to take appropriate action as the vessels approach Australian waters on the high seas.[51]

The Expert Panel on Asylum Seekers 2012 report also did not rule out the use of 'turnbacks' if 'appropriate regional and bilateral arrangements' were in place.[52]

During debate on the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, Shadow Minister for Immigration and Border Protection, Richard Marles, foreshadowed that although the Australian Labor Party (ALP) would be opposing the legislation due to several concerns (in particular the proposed re-introduction of Temporary Protection Visas), Labor was open to the question of turning back boats.[53]

In July 2015, the ALP agreed to amend its position on boat 'turnbacks' after heated debate during its annual National Conference. Subsequently Labor's asylum seeker policy outlined the detail, stating that 'Provided it can be done so safely, a future Labor Government will retain the option of turning boats around'.[54]

Mandatory immigration detention

Australia's policy of mandatory detention (that is, the legal requirement to detain all non-citizens who do not hold a valid visa) was introduced by the Keating (Labor) Government in the early 1990s.[55] Since its introduction, Labor and the Coalition have continued to support the policy. Although the numbers fluctuate, the detainee

45. J Swan, 'Abbott goes to war with press release diplomacy', *Sydney Morning Herald*, 11 January 2014, p. 7.

46. J Phillips, *Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics*, op. cit.

47. DIBP, *Operation Sovereign Borders monthly update: December 2015*, DIBP website. Note: for definitions of the difference between 'takebacks' and 'turnbacks' and updates on the numbers see J Phillips, *Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics*, op. cit.

48. Lieutenant General A Campbell, *Operation Sovereign Borders update*, transcript, 15 January 2014. Note: In March 2015 media reports claimed that the Australian Government would replace the orange lifeboats used in boat turnbacks with ten custom-made Vietnamese-built fishing vessels, see B Doherty and H Davidson, 'Orange lifeboats used to return asylum seekers to be replaced by 'fishing boats'', *Guardian* (Australia), 5 March 2015.

49. R Ryan, 'Tony Abbott, Scott Morrison announce new 'regional deterrence framework' to stop asylum seekers', *ABC*, 23 August 2013; and S Morrison (Shadow Minister for Immigration), *Coalition policy for a regional deterrence framework to combat people smuggling*, transcript, *ABC News 24*, 23 August 2013.

50. Senate Legal and Constitutional Affairs Legislation Committee, *Official committee Hansard*, 19 November 2013, p. 73.

51. P Kelly and D Shanahan, 'Rudd to turn back boatpeople', *Australian*, 23 November 2007, p. 1.

52. Expert Panel on Asylum Seekers, *Report of the Expert Panel on Asylum Seekers*, op. cit., p. 54.

53. R Marles (Shadow Minister for Immigration and Border Protection), Second reading speech: Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, House of Representatives, *Debates*, 22 October 2014.

54. A Gartrell, 'Shorten prevails on ALP boat turnback policy', *Canberra Times*, 26 July 2015; B Shorten (Leader of the Opposition) and R Marles *Labor's humane and compassionate asylum seeker policy*, op. cit.; and ALP, *A humane and compassionate approach to asylum seekers*, op. cit.

55. J Phillips and H Spinks, *Immigration detention in Australia*, Background note, Parliamentary Library, Canberra, 20 March 2013.

population is usually comprised of unauthorised boat arrivals, visa overstayers and others (such as those who have had their visas cancelled).

With a surge in boat arrivals in the late 1990s, the challenge of providing additional and appropriate accommodation to avoid overcrowding and a deterioration of conditions was a significant one for the Howard Government. It proved to be the case again for the Labor Government following a surge in arrivals between 2008 and 2013.[56]

In response, both the Howard (Coalition) and Labor governments made provisions for additional accommodation during their terms; however, the detention of asylum seekers in often remote locations received a great deal of public attention. In particular, the duration and conditions of their detention have been controversial issues that have plagued successive governments. During the Howard Government, the conditions in detention centres, the length of detention and the physical and psychological effects on detainees in offshore processing centres and in onshore detention facilities such as Woomera attracted a great deal of criticism.[57] Refugee advocates and other stakeholders were also critical of the mandatory detention regime that continued under the Rudd and Gillard Governments. 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.[58] The Gillard Government subsequently lifted this suspension, but over-crowding, delays in processing, and protests and rioting in both onshore and offshore detention centres attracted further criticism.

Subsequently, in 2010 and 2011, the Gillard Government expanded community detention (elements of which were initiated originally as a pilot program under the Howard Government) to ease the pressure on the detention network.[59]

More criticism followed when the Gillard's Government's 'no advantage' principle, introduced in August 2012 (as recommended by the Expert Panel on Asylum Seekers), prompted concerns about processing delays for asylum seekers. As mentioned previously, under the 'no advantage' principle the Panel proposed that 'irregular migrants gain no benefit by choosing to circumvent regular migration mechanisms'.[60] In essence, boat arrivals would remain in immigration detention and gain no time advantage over applicants waiting overseas for resettlement in Australia.

In an attempt to further release pressure on the detention network, the Gillard Government introduced the practice of releasing significant numbers of asylum seekers on bridging visas (BVEs) in November 2012.[61] Others remained in immigration detention (in either closed facilities or in the community) or were transferred to offshore processing centres in Nauru and PNG.

However, the Gillard Government continued to assert that all who arrived after 13 August 2012—regardless of whether they were in 'held' detention (in a secure detention facility), in offshore processing centres or released into the community on BVEs—would be subject to the 'no advantage' policy, although it was not clear what this meant in practice.[62]

During this period Opposition Leader Tony Abbott continued to state that while a Coalition Government would continue the policy of offshore processing, it would send all, not some, boat arrivals offshore and not detain any new arrivals in onshore detention facilities at all:

> 'We really will send illegal arrivals by boat offshore to places like Manus and Nauru for processing. And it won't just be one in ten or one in 20—they'll all go off'.[63]

On the return of Kevin Rudd as Prime Minister in June 2013, the Rudd Government also made the decision that all boat arrivals, not some, would be transferred to PNG for processing.[64] A similar agreement with the

---

56. J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, op. cit.; and J Phillips, *Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics*, op. cit.

57. Ibid.

58. R Peake, 'Don't renew Sri Lankan freezes: advocates', *Canberra Times*, 30 June 2010, p. 5.

59. C Bowen (Minister for Immigration and Citizenship), *Government to move children and vulnerable families into community-based accommodation*, media release, 18 October 2010.

60. A Houston, *Report of the Expert Panel on Asylum Seekers released*, media release, 13 August 2012.

61. C Bowen (Minister for Immigration and Citizenship), *No advantage onshore for boat arrivals*, media release, 21 November 2012.

62. Ibid.

63. Opposition to send all boat arrivals offshore, *9 News National*, 16 April 2013.

Government of Nauru was announced in August 2013.[65] Under these new regional settlement arrangements all UMAs arriving after 19 July 2013 would be subject to transfer, processing and even resettlement offshore:

> A cornerstone of this regional approach is to ensure people smugglers do not have a product to sell because people that come by boat without a visa will not be settled in Australia.[66]

On the election of the Abbott Government in September 2013 this regime was maintained. Under Operation Sovereign Borders, which commenced on 18 September 2013, all unauthorised maritime arrivals whose vessels were not turned back would only remain in immigration detention facilities (usually on Christmas Island) for a short period before being transferred offshore. At the first Operation Sovereign Borders media briefing on 23 September 2013, the new Minister for Immigration and Border Protection, Scott Morrison, made it clear that the Government would transfer all new boat arrivals from Australian immigration detention facilities to PNG or Nauru within 48 hours of their arrival.[67]

In summary, both Coalition and Labor governments have remained firmly in support of Australia's mandatory immigration detention policy since it was introduced in the 1990s. The Coalition and Labor also support mandatory detention for unauthorised maritime arrivals (on board any boats that are not successfully turned around) while transfer arrangements to offshore processing centres are made. Australia's mandatory detention policy also applies to any asylum seekers temporarily transferred to Australia from offshore processing centres for medical treatment.

Regional cooperation, border protection and anti-people smuggling

Labor and the Coalition argue that people smuggling is an unacceptable organised criminal activity that endangers innocent people's lives. Both have remained committed to increased cooperation with Indonesia and other countries in the region and to creating harsher anti-people smuggling measures. Coalition and Labor governments have also allocated significant funding towards supporting border protection, regional cooperation and anti-people smuggling measures in the region for many years.[68]

Following a surge in unauthorised boat arrivals in the late 1990s and early 2000s, the Howard Government introduced a number of new border protection measures. This included increased border surveillance and a people smuggling 'disruption' campaign aimed at preventing boats from leaving Indonesia in the first place.[69] In 2002, the Australian and Indonesian Governments were also instrumental in establishing the Bali Process to develop regional cooperation on people smuggling, trafficking in persons and the irregular movement of people. The Bali Process is a forum made up of 48 member countries and other key stakeholders, including the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).[70]

With another surge in the number of boat arrivals from September 2008, the Rudd Government was under pressure to further address border security and people smuggling issues. In the 2009–10 Budget, the Rudd Government allocated $654 million across several portfolios to fund a whole-of-government strategy to combat people smuggling and help address the problem of unauthorised boat arrivals.[71] The Rudd Government also secured the passage of legislation which created new people smuggling offences.

Prior to the 2010 election, Julia Gillard made it clear that her Government would continue to pursue these anti-people smuggling initiatives through various whole-of-government measures and the Bali Process.[72] In March 2011, the Bali Process member countries, including Australia, agreed to a new Regional Cooperation Framework

---

64. K Rudd (Prime Minister), M Dreyfus (Attorney-General) and T Burke (Minister for Immigration), *Australia and Papua New Guinea Regional Settlement Arrangement*, joint media release, 19 July 2013.

65. K Rudd (Prime Minister), *New arrangement with Nauru Government*, joint media release, 3 August 2013.

66. Ibid.

67. S Morrison (Minister for Immigration and Border Protection), *Operation Sovereign Borders Joint Agency Taskforce address*, joint transcript, 23 September 2013.

68. H Spinks, C Barker and D Watt, *Australian Government spending on irregular maritime arrivals and counter-people smuggling activity*, Research paper series, 2012–13, Parliamentary Library, Canberra, 4 September 2013; and K Bem, N Field, N Maclellan, S Meyer and T Morris et al, *A price too high: the cost of Australia's approach to asylum seekers*, Oxfam, August 2007.

69. S Taylor, 'Australia's response to people smuggling', *Migration Action*, 24(3), December 2002.

70. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, The Bali Process website.

71. J Phillips, *Border protection and combating people smuggling*, Budget Review 2009–10, Parliamentary Library, Canberra, May 2010.

72. J Gillard (Prime Minister), *Moving Australia forward*, op. cit.

(RCF) that would 'enable interested Bali Process members to establish practical arrangements aimed at enhancing the region's response to irregular movement through consistent processing of asylum claims, durable solutions for refugees, the sustainable return of those not owed protection and targeting of people smuggling enterprises'.[73]

Although a Regional Support Office subsequently opened in Bangkok on 10 September 2012, many argued that very little progress was being made in implementing the full objectives of the RCF.[74] Instead, the UNHCR expressed concerns that a growing focus on 'regional deterrence' was detracting from the progress made through regional cooperative frameworks such as the Bali Process:

> UNHCR is deeply troubled that as long as the focus remains primarily on deterrence, the humanitarian, ethical and legal basis of asylum, and the protection of refugees, will be seriously undermined.[75]

> … some significant steps have been taken within ASEAN, as well as the Bali Process framework, notably through the endorsement of a Regional Cooperation Framework and the establishment of a Regional Support Office [RSO] … We now need to move beyond the language of cooperation towards practical and concrete measures and arrangements …

> Information campaigns, restrictive border practices and punitive measures have proved not to be adequate to prevent or dissuade movements in these circumstances. They do not work on their own. Worse, in the absence of a refugee protection and migration framework, deterrence measures can raise the stakes and therefore render the market for smugglers and traffickers more risky, but also more profitable.[76]

In its 2013 election document on a regional deterrence framework, the Coalition promised 'a higher level of operational engagement' in the region through the Bali Process and committed to both regional cooperation and regional deterrence activities with Indonesia, Sri Lanka and Malaysia 'to combat people smuggling'.[77] Some commentators were critical of many of these measures (for example, the introduction of tougher penalties aimed at those arrested on people-smuggling offences) on the basis that they did not effectively target people smuggling syndicates, but simply punished low-level offenders, such as the possibly unsuspecting Indonesian fishermen who operate the boats.[78]

On coming to power in September 2013, the Coalition Government announced it would boost operational activities with the Government of Indonesia to prevent people smuggling.[79] The Abbott Government's subsequent Mid-Year Economic and Fiscal Outlook 2013–14 (MYEFO) and 2014–15 Budget included funding for several significant anti-people smuggling measures, including $40.9 million from 2013–14 to 2015–16 to 'detect and disrupt irregular movements of people from source and transit countries and reduce the flow of potential illegal immigrants to Australia'.[80] The 2015–16 Budget included further funding, including $1.3 million for that program year to continue activities through the Bali Process Regional Support Office to support implementation of the Regional Cooperation Framework to reduce irregular migration in the Asia Pacific region.[81] Funding was also allocated ($4.7 million in 2015–16) to retain Australian Border Force postings in Indonesia, Malaysia and Sri Lanka to coordinate activities aimed at preventing maritime people smuggling.[82]

---

73. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, op. cit.

74. UNHCR, Refugee newsletter, December 2013, UNHCR Regional Office for Australia, New Zealand, Papua New Guinea and the Pacific website, archived.

75. R Towle, UNHCR calls for compassion and legal principles to be at the centre of policy responses, UNHCR regional office website, media release, 23 November 2012, archived.

76. V Turk, UNHCR statement, Special Conference on Irregular Movement of Persons, Jakarta, Indonesia, 20 August 2013, UNHCR website.

77. Liberal Party of Australia and the Nationals, The Coalition's policy for a regional deterrence framework to combat people smuggling, Coalition policy document, Election 2013, August 2013.

78. M Crock and D Ghezelbash, 'Do loose lips bring ships? The role of policy, politics and human rights in managing unauthorised boat arrivals', Griffith Law Review, 19(2), 2010.

79. S Morrison (Minister for Immigration and Border Protection), Meeting summary as agreed between Australia and Indonesia, media release, 1 November 2013.

80. C Barker, 'Counter-people smuggling measures', Budget review 2014–15, Parliamentary Library, Canberra, May 2014.

81. C Barker, 'Border protection and counter-people smuggling measures', Budget review 2015–16, Parliamentary Library, Canberra, May 2015.

82. Ibid.

In summary, Labor and the Coalition are largely in agreement over Australia's border protection, regional cooperation and anti-people smuggling initiatives, including support for the Bali Process. The ALP's July 2015 asylum policy stated that 'a Labor Government will take a leadership role within South East Asia and the Pacific to build a regional humanitarian framework to improve the situation of asylum seekers', but no substantial details were provided on how this would differ from the Australian Government's current approach.[83] The ALP's 2016 election document noted that a Labor Government would provide more funding to the UNHCR and advocate for work rights for asylum seekers in the region, but provided no further detail on the components of a new or enhanced regional humanitarian framework.[84]

However, refugee advocates and other stakeholders continue to be highly critical of the lack of progress towards achieving comprehensive regional cooperation under both Coalition and Labor governments:

> The so-called Bali process co-chaired by Australia and Indonesia since 2002 has failed to deal with the global challenge of forced migration or fully curb the abhorrent trade in people smuggling that has taken advantage of thousands of people who have risked everything to flee war and persecution. Instead of an Asia Pacific wide solution that seeks to protect asylum seekers and provide safe pathways for those in need, Australia has served its own self-interest and left people seeking asylum in limbo in Nauru and PNG.[85]

At the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime co-chaired by Australia and Indonesia in March 2016, it was agreed that the Bali Process priorities for the next two years would focus on expanding safe and legal migration pathways, returns and reintegration, and cross-border operations to tackle criminal syndicates.[86]

Policy differences

The two major parties disagree on a small number of issues, in particular whether asylum seekers should be offered temporary, not permanent protection; and what size Australia's formal annual intake of refugees and other humanitarian entrants should be. However, it is worth noting that there have been times when there has been a certain amount of bi-partisan agreement on some aspects of both of these issues, as outlined below.

Temporary not permanent protection

In October 1999, the Howard Government formally introduced the practice of offering temporary, not permanent, protection for asylum seekers who had arrived unauthorised by boat and had been found to be refugees.[87] Prior to that, short-term protection arrangements had only been offered for distinct groups in response to a humanitarian crisis. For example, 'Domestic Protection (Temporary) Entry Permits' were issued during the Hawke Government for Chinese nationals on student visas present in Australia after the Tiananmen massacre in 1989.[88]

In May 2008 the Rudd Government honoured an election commitment and abolished the Howard Government's Temporary Protection Visa (TPV) category for asylum seekers and granted permanent protection to those still in the country on these visas (around 1,000 at the time).[89] Subsequently, the Rudd and Gillard Governments continued to reject calls by the Opposition for a reintroduction of TPVs in spite of the rise in boat arrivals.

The Coalition has consistently argued that increases in the number of unauthorised boat arrivals related directly to the abolition of TPVs (along with the ending of the Howard Government's 'Pacific Solution'), claiming that TPVs were an effective deterrent to boat arrivals.[90] Labor argued, along with many commentators and refugee advocates, that the introduction of TPVs was ineffective in reducing the number of unauthorised boat arrivals.[91] Many pointed out that it may actually have led to an increase in women and children undertaking the journey to

83. ALP, *A humane and compassionate approach to asylum seekers*, op. cit.

84. ALP, *Immigration—regional and global efforts*, ALP policy document, 2016 election.

85. Save the Children, *Turnbull Government must re-imagine Bali Process so that it protects rather than breaks people seeking asylum*, media release, 22 March 2016. See also, M Gordon, '*Asylum seekers—is there a better way?*', *The Saturday Age,* online, 30 January 2016.

86. J Bishop (Minister for Foreign Affairs) and P Dutton (Minister for Immigration and Border Protection), *Regional agreement to combat people smuggling and human trafficking*, media release, 23 March 2016.

87. J Phillips, *Temporary Protection Visas*, Research note, 51, 2003–04, Parliamentary Library, Canberra, 11 May 2004.

88. F Mansouri and M Leach, '*The evolution of the Temporary Protection Visa regime in Australia*', *International Migration*, 47(2), June 2009.

89. C Evans (Minister for Immigration and Citizenship), *Rudd Government scraps Temporary Protection Visas*, media release, 13 May 2008.

90. For example, T Abbott (Leader of the Opposition), *Restoring sovereignty and control to our borders*, joint press conference, transcript, 27 May 2010.

91. C Evans (Minister for Immigration and Citizenship), *Failed policies and cheap politics offer no solutions*, media release, 27 May 2010.

Australia by boat, as TPVs did not provide family reunification rights, so families could not rely on men travelling to Australia alone and bringing their wives and children out to join them once they had been granted protection. In 2012, in answer to a question asked in Senate Estimates, the Department of Immigration and Citizenship provided statistics showing a rise in the number of women and children arriving after 1999 that added weight to this claim.[92]

However, in an apparent softening of Labor's position, the Prime Minister, Julia Gillard, told the Opposition in June 2012 that the Government was prepared to review temporary protection visas and their deterrence value.[93]

On 21 November 2012, the Minister for Immigration and Citizenship announced that people who had arrived by boat after 13 August 2012 would not necessarily be transferred offshore due to the sheer numbers. Instead, under the 'no advantage' principle, if found to be refugees they would not be issued with permanent protection visas 'until such time that they would have been resettled in Australia after being processed in our region'. Others, released from detention into the community while they waited an outcome on their asylum claims, would be issued with bridging visas without work rights.[94] The widespread use of bridging visas was characterised by some observers as a return to temporary protection under a different name.[95]

Before the 2013 election, the Coalition consistently stated that, under an Abbott Government, TPVs would be reintroduced as a deterrence measure and issued to any unauthorised asylum seeker arrival found to be a refugee onshore (that is, had not been transferred to an offshore processing centre).[96] After coming to power in September 2013, the Coalition re-introduced TPVs the following month, via an amendment to the Migration Regulations.[97] However, on 2 December 2013 a disallowance of the Migration Amendment (Temporary Protection Visas) Regulation 2013 was moved by the Greens in the Senate and agreed to with the support of Labor (as of 18 November 2013, only three TPVs had been granted since their re-introduction).[98] The Coalition Government continued its attempts to reintroduce TPVs over the following twelve months, but the efforts were not to be realised until the successful passage of legislation in December 2014 which reintroduced TPVs and also introduced a new class of temporary protection visa, valid for five years, to be called a Safe Haven Enterprise Visa (SHEV).[99]

At the time, there were approximately 32,000 people considered to fall into the 'asylum legacy' category (almost 23,000 people released into the community on bridging visas; over 3,000 people in community detention and just over 6,000 people in held detention).[100] During the Senate Estimates hearing in February 2016, departmental officers stated that there were 30,500 people remaining in the 'asylum legacy' caseload and that the Minister had authorised 12,155 of the 24,500 'fast track' caseload who had arrived after 13 August 2012 to apply for a TPV or SHEV.[101]

In summary, the Coalition Government remains firm in its resolve to deny permanent protection to any people who arrived by boat remaining onshore. Although the Gillard Government stated in 2012 that it would be prepared to review the use of temporary protection visas, in 2013 Labor joined with the Greens in its opposition to the re-introduction, arguing that due to:

92. Senate Legal and Constitutional Affairs Committee, Answers to Questions on Notice, Immigration and Citizenship Portfolio, Budget Estimates 2012–13, 21–22 May 2012, Question BE12/0265.

93. J Gillard (Prime Minister), Asylum seekers, House of Representatives, Statements on indulgence, speech, 27 June 2012, p. 8219.

94. C Bowen (Minister for Immigration and Citizenship), No advantage onshore for boat arrivals, media release, 21 November 2012.

95. M Dodd and L Wilson, 'Worse off now than in Howard years: Le', The Australian, 14 October 2011, p. 6.

96. Liberal Party of Australia and the Nationals, The Coalition's policy to clear Labor's 30,000 border failure backlog, Coalition policy document, Election 2013, August 2013.

97. See H Spinks, A return to Temporary Protection Visas?, FlagPost, Parliamentary Library blog, 18 November 2013.

98. Senate Legal and Constitutional Affairs Legislation Committee, Official committee Hansard, Estimates, 19 November 2013, p. 86.

99. E Karlsen, J Phillips and H Spinks, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, Bills Digest, Parliamentary Library, 23 October 2014.

100. DIBP, Immigration detention statistics, op. cit.

101. Senate Legal and Constitutional Affairs Legislation Committee, Hansard, Estimates, 8 February 2016, pp. 84–5. Note: the legacy caseload is comprised of 6,000 unauthorised maritime arrivals who arrived prior to 13 August 2012 and 24,500 who arrived after 13 August 2012.

> …the PNG Regional Resettlement Arrangement in place the Abbott Government's stated rationale for TPVs is redundant. If TPVs are not to apply to any new arrivals in Australia, because they are being resettled in PNG, then TPVs cannot act as a deterrent. They will only apply to a cohort which is already in Australia'.[102]

In its July 2015 asylum policy Labor confirmed its continuing opposition to the Coalition Government's TPV regime:

> Labor will abolish TPVs which keep people in a permanent state of limbo. Labor will commit to processing people as quickly as possible and placing those found to be genuine refugees on permanent protection visas.[103]

Australia's Humanitarian Program

The Australian Labor Party and the Coalition currently differ slightly in their view on the number of humanitarian entrants Australia should accept each year, although in the past there has been some agreement on this issue. There has also been some degree of agreement on family reunion policy for refugees who wish to sponsor family members under Australia's Humanitarian or Migration programs.

Australia is one of only about twenty countries worldwide that participate formally in the UNHCR's refugee resettlement program by accepting quotas of offshore, UNHCR-referred, humanitarian entrants each year. Australia's Humanitarian Program annual planning intakes (for both offshore and onshore entrants) have hovered between 12,000 and 13,750 places since 1996 (with the exception of 2012–13 when the Labor Government increased the intake to 20,000).[104]

However, in terms of the total number of 'people of concern' globally, the UNHCR's resettlement program contributes to resettling only a small proportion of the world's refugees annually (about 1 per cent).[105] Even if asylum seekers were to cease to attempt to arrive in Australia by boat completely, asylum flows are still growing globally due to the levels of conflict and unrest in places like Afghanistan and Syria.[106] As a result, refugee advocates have argued for an increase in Australia's resettlement commitment for many years.[107]

In 2012, the then Minister for Immigration and Citizenship, Chris Bowen, had supported such an increase and stated on several occasions that his preference would be to increase Australia's humanitarian intake to 20,000 per annum.[108] However, he pointed out that the settlement costs arising from such an increase would be expensive.

In an address to the Institute of Public Affairs in April 2012, the then Leader of the Opposition, Tony Abbott, also expressed support for an increase in Australia's humanitarian intake under a future Coalition Government.[109] This would be achieved through sponsorship options by allowing 'community groups to sponsor refugees on a bonded basis that would take the annual intake to 15,000'.[110] In June 2012 Mr Abbott went further and made a commitment that a Coalition Government would increase the Humanitarian Program's annual intake to 20,000.[111]

In line with recommendations of the Expert Panel on Asylum Seekers, the Gillard Government announced on 23 August 2012 that, in spite of the expense, it would be increasing Australia's Humanitarian Program from 13,750 to 20,000 places in 2012–13.[112] The decision included an immediate commitment to resettle an additional 400 refugees directly from Indonesia.

---

102. R Marles (Shadow Minister for Immigration), *TPVs no deterrent to boat arrivals*, media release, 3 December 2013.

103. ALP, *A humane and compassionate approach to asylum seekers*, op. cit.

104. J Phillips, *Australia's Humanitarian Program: a quick guide to the statistics since 1947*, Quick guide, Parliamentary Library, Canberra, 2017.

105. See J Phillips, *Asylum seekers and refugees: what are the facts?*, Background note, Parliamentary Library, Canberra, 2 March 2015.

106. J Menadue, 'Election aftermath: where to now on asylum seekers and refugees?' and E Feller, 'Boats: what to do? A practitioner's viewpoint', in B Douglas and J Wodak (eds), *Refugees and asylum seekers: finding a better way*, op. cit.

107. Refugee Council of Australia, *Call for increase in size of Humanitarian Program*, media release, 12 March 2004.

108. For example see C Bowen (Minister for Immigration and Citizenship), '*The Refugee Convention and beyond*', keynote address to the International Association of Refugee Law Judges: Australasian Chapter regional conference, Melbourne, 3 February 2012.

109. T Abbott (Leader of the Opposition), *The Coalition's plan for more secure borders, address to the Institute of Public Affairs, Melbourne*, speech, op. cit.

110. Ibid.

111. J Moylan, *Malaysian swap legislation: statement*, media release, 29 June 2012.

112. J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), *Refugee program increased to 20,000 places*, joint media release, 23 August 2012.

However, the Coalition's June 2012 commitment to increase the Humanitarian Program was reversed after the Gillard Government increased the humanitarian intake to 20,000. On 23 November 2012, Mr Abbott announced that, if elected, a Coalition Government would return the annual intake to the level of 13,750 (with 11,000 of the places reserved for offshore entrants) as a budget saving measure.[113] In his announcement Mr Abbott stated that the bulk of the 13,750 Humanitarian Program places would be reserved for 'genuine refugees applying offshore'. The Shadow Minister for Immigration and Citizenship, Scott Morrison, stated 'Not one of those places will go to anyone who comes on a boat to Australia. They will go to people who have come the right way'.[114]

Subsequently, in the lead-up to the 2013 election the Coalition made it clear that, if elected, the Humanitarian Program would be reduced and that the annual intake would return to 13,750 under the Coalition's Refugee and Special Humanitarian programs.[115]

When Kevin Rudd returned as Prime Minister in July 2013, he confirmed that the humanitarian intake would remain at 20,000 per year, with 12,000 places reserved for offshore refugees referred by the UNHCR.[116] Mr Rudd also flagged that, if regional arrangements with Pacific nations led to a decrease in boat arrivals, he would be prepared to consider progressively increasing Australia's humanitarian intake to 27,000 as recommended by the Expert Panel:

> If the measure announced today and the international meeting on the Convention that has been flagged lead to a significant change in the number of people arriving by boat, then the Government stands ready to consider progressively increasing our humanitarian intake towards 27,000 as recommended by the Houston Panel.[117]

As promised, upon taking office in 2013, the Abbott Government reduced the Humanitarian Program intake to 13,750. However, on 3 December 2014, the then Minister, Scott Morrison, announced that if the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 were to pass, the Government would increase the Humanitarian Program in the following Budget to 16,250 in 2017–18 and 18,750 in 2018–19 at a cost of $100 million (although the new legislation also would enable the Minister to limit or 'cap' the number of protection visas that could be granted in a financial year).[118]

Subsequently, the new Minister for Immigration and Border Protection, Peter Dutton, announced during the 2015–16 Budget that the Humanitarian Program intake would remain at 13,750 for 2016–17, but would increase to 16,250 in 2017–18 and 18,750 in 2018–19.[119] Later in the year (September 2015) the Government also announced a temporary increase to the Humanitarian Program intake with the creation of an additional 12,000 places for refugees fleeing conflict in Syria and Iraq.[120]

Labor's July 2015 asylum policy included a statement that by 2025 a Labor Government would further increase Australia's annual humanitarian intake to 27,000.[121]

In September 2016, the Prime Minister, Malcolm Turnbull, announced that the Coalition Government's Humanitarian Program would be maintained at the increased level of 18,750 places from 2018–19 onwards.[122] At the same time it was announced that the Government would create 'new pathways for refugees to resettle in Australia under a Community Support Program'.[123] A community proposal pilot program was first established in June 2013 by the Labor Government to explore whether some of the settlement support and associated costs could be provided by non-Government community sponsors. The pilot program's objective was also to create

113. T Abbott (Leader of the Opposition), *Government must live within its means: Humanitarian Programme*, joint media release, 23 November 2012.

114. S Morrison (Shadow Minister for Immigration and Citizenship), Transcript of joint press conference, Melbourne, 23 November 2012.

115. Liberal Party of Australia and the Nationals, *The Coalition policy to clear Labor's 30,000 border failure backlog*, op. cit.

116. K Rudd (Prime Minister), *Australia and Papua New Guinea Regional Settlement Arrangement*, joint media release, 19 July 2013; and Department of Immigration (DIAC), 'Regional resettlement arrangements', DIAC website (archived), July 2013.

117. Ibid.

118. S Morrison (Minister for Immigration and Border Protection), *Transcript of press conference*, Parliament House, 3 December 2014.

119. P Dutton (Minister for Immigration and Border Protection), *Restoring integrity to refugee intake*, media release, 12 May 2015.

120. T Abbott (Prime Minister), J Bishop (Minister for Foreign Affairs), Scott Morrison (Minister for Social Services) and P Dutton (Minister for Immigration and Border Protection), *The Syrian and Iraqi humanitarian crisis*, joint media release, 9 September 2015.

121. ALP, *A humane and compassionate approach to asylum seekers*, op. cit.; and ALP, *Immigration—increasing the humanitarian intake*, ALP policy document, 2016 election.

122. M Turnbull (Prime Minister), *Leaders' summit on refugees*, joint media release, 21 September 2016.

123. Ibid.

'additional resettlement pathways'.[124] However, unlike a similar program in Canada where private sponsorship supplements the Government's resettlement program, these places are not additional and are to be allocated from the existing Humanitarian Program annual quotas.[125]

Another area where the major parties appear to differ slightly is on the number of entrants that they are prepared to resettle through Australia's Humanitarian Program directly from Indonesia. In a departure from previous government practice, on 18 November 2014 the Coalition Government announced that asylum seekers registered with UNHCR in Indonesia on or after 1 July 2014 would no longer be eligible for resettlement in Australia as 'part of the Government's ongoing work in the region to strip people smugglers of a product to sell to vulnerable men, women and children'.[126] In response, Labor expressed its concerns and noted that 'the Abbott Government's announcement that it will no longer take refugees from Indonesia after July 1 of this year raises serious questions about the implementation of Australia's humanitarian program'.[127] In its July 2015 asylum policy Labor stated that it would be dedicating a portion of the humanitarian intake to resettling refugees from the region which presumably could include Indonesia:

> As part of our commitment to demonstrating leadership in our region, a portion of the program will be dedicated to resettling refugees from the region.[128]

However, although there is some disagreement on the size and makeup of Australia's annual humanitarian intakes, both major parties have supported limiting family reunion options for those accepted under the Humanitarian Program who originally arrived unauthorised by boat.

In 2012, the Gillard Government accepted one of the Expert Panel's recommendations and announced all people arriving by boat after 13 August 2012 could no longer sponsor family members under Australia's Humanitarian Program (instead they had to propose family members under the family stream of the Migration Program). The changes also removed access to Special Humanitarian Program (SHP) family reunion concessions for people arriving by boat before 13 August 2012.[129] To accommodate the expected increase in demand for visas in the family migration stream, the Government announced it would increase the number of family stream places by 4,000 per year. These would be quarantined specifically for humanitarian entrants (both UMAs and non-UMAs). In response, refugee advocates expressed concerns that strict eligibility requirements and high application costs under the Migration Program would effectively prevent access to family reunion options for most UMAs and that the barriers to resolving these issues would be significant.[130]

In contrast, the Coalition prefers the option of granting TPVs with no family reunion rights at all. In the lead up to the 2013 election the Coalition was adamant that any asylum seekers who arrived unauthorised by boat would not receive a permanent visa or have access to family reunion options under a Coalition Government.[131] In December 2013, before TPVs were successfully reintroduced, the Abbott Government announced that family stream applications from unauthorised maritime arrivals would be given the lowest processing priority with the expected result that 'applications will not be processed for several years'.[132]

While Labor does not support the Coalition's stance on TPVs, it is not clear whether a future Labor Government would continue to bar all people arriving by boat after 13 August 2012 from sponsoring family members under Australia's Humanitarian Program—as was the case under the previous Labor Government.

124. DIBP, *Community proposal pilot*, Information sheet, DIBP website.

125. See S Kneebone, A Hirsch and A Macklin, '*Private resettlement models offer a way for Australia to lift its refugee intake*', *The Conversation*, 19 September 2016.

126. S Morrison (Minister for Immigration and Border Protection), *Changes to resettlement another blow to people smugglers*, media release, 18 November 2014.

127. R Marles (Shadow Minister for Immigration and Border Protection), *Australia must not shirk its regional responsibilities*, media release, 19 November 2014.

128. ALP, *A humane and compassionate approach to asylum seekers*, op. cit.

129. C Bowen (Minister for Immigration and Citizenship), *Government implements Expert Panel's family reunion recommendation*, media release, 24 September 2012.

130. For example, Amnesty International, *Submission to the Department of Immigration and Citizenship 2013–14 Refugee and Special Humanitarian Program*, 21 January 2013; and Federation of Ethnic Communities Councils of Australia (FECCA), *FECCA submission to the Department of Immigration and Citizenship, Australia's Humanitarian Program 2013–14 and beyond*, January 2013.

131. Liberal Party of Australia and the Nationals, *The Coalition policy to clear Labor's 30,000 border failure backlog*, op. cit.

132. DIBP, *What changes have been made to priority processing for family stream visa applications sponsored by illegal maritime arrivals (IMAs)?*, DIBP website; and Liberal Party of Australia and the Nationals, *Our plan: real solutions for all Australians – the direction, values and policy priorities of the next Coalition Government*, op. cit.

In summary, it is true to say that currently the Coalition supports a slightly smaller Humanitarian Program intake of 18,750 by 2018–19 compared with Labor's previous intake of 20,000 in 2012–13 (and its more recent commitment to an intake of 27,000 by 2025). However, other measures, such as some of the family reunion restrictions for UMAs, have received support from both major political parties in recent years.

What are the alternatives?

While the numbers of people seeking protection around the world ebb and flow in response to specific global conflicts, the number of people of concern to the UNHCR each year has continued to grow—with over 65 million people displaced worldwide in 2016.[133] The magnitude and complexity of the issues arising from these global asylum flows poses huge challenges for all of the world's destination countries, not just Australia.

Destination countries all struggle to create policies that maintain an acceptable balance between the perceived need to control national borders while still fulfilling protection obligations towards the millions of displaced people in need of assistance. However, as 'unauthorised' migration flows grow, States are increasingly resorting to more restrictive border control policies and disruption measures to try and control the movements of 'irregular' migrants.[134]

In Australia, there was a significant rise in the number of asylum seekers arriving unauthorised by boat between 2008 and 2013. This placed increasing pressure on both Labor and Coalition governments to adopt and maintain measures that are seen to address border security concerns and combat people smuggling. Although the Coalition's boat 'turnback' policy has prevented most boats from entering Australian waters since December 2013, the pressure to prevent any future waves of boat arrivals remains firmly embedded in government policy.

The Expert Panel on Asylum Seekers established in 2012 to advise the Government on 'the best way forward' to address these issues, noted that there 'were no quick or simple solutions' and that there should be 'no single focus'. The Panel argued for an integrated suite of short-term and long-term proposals that included both disincentives (such as the re-introduction of an offshore processing regime) and incentives (such as an immediate increase in Australia's Humanitarian Program). Long-term proposals included recommendations that the Government create better migration pathways and protection opportunities for refugees coordinated within an 'enhanced regional cooperation framework'.[135]

However, to date many long-term proposals along the lines of those recommended by the Expert Panel have not been pursued. Without long-term effective mechanisms in place and an expansion of protection opportunities in the region, it is argued that 'different categories of vulnerable people in need of protection' will continue to be 'pitted against one another' in the public debate.[136]

The UNHCR has long been aware of the tensions specific to the Asia Pacific region, posing challenges for all the regional governments, including Australia. However, it questions the effectiveness of increasingly harsh deterrence measures in stemming asylum flows, arguing that in the long-term the threat of detention or even drowning may be perceived to be the lesser evil for desperate asylum seekers.[137] Former United Nations Assistant High Commissioner for Protection, Erika Feller, asserts that investment in deterrence is inevitably 'doomed to failure' for those reasons:

> Investment in deterrence as the preferred solution to the challenge posed [to] States by irregular boat arrivals is doomed to failure … boats … have long been and remain a lifeline for the desperate … the boats will continue as long as the root causes of departure remain unresolved.[138]

In the long-term, greater cooperation with our regional neighbours on a burden-sharing basis is seen by the UNHCR to be a key component of future progress.[139] Many other stakeholders agree, arguing that there should be more focus on genuine cooperative engagement and burden-sharing with our neighbours.[140]

133. UNHCR, *Global trends 2015*, UNHCR website, 2016.

134. A Keski-Nummi, 'A place of refuge: responses to international population movements', in B Douglas and J Wodak (eds), *Refugees and asylum seekers: finding a better way*, op. cit.

135. Expert Panel on Asylum Seekers, *Report of the Expert Panel on Asylum Seekers*, op. cit.

136. D Corlett, op. cit.

137. For an example of these perceptions see A K Hekmat, 'We asylum seekers risk boats because it is our only option', *Sydney Morning Herald*, 27 December 2010, p. 11.

138. E Feller, 'Boats: what to do? A practitioners viewpoint', op. cit. See also Professor J McAdam, 'Leading on protection', in B Douglas and J Wodak (eds), *Refugees and asylum seekers: finding a better way*, op. cit.

Under such an approach, regional processing of asylum seekers under the auspices of the UNHCR and the IOM might be negotiated through a regional cooperative framework such as the Bali Process. Other long-term burden-sharing options might include the development of programs like the Comprehensive Plan of Action (established to deal with the Indochinese asylum flows) together with the creation of more protection space for those found to be in need of protection along the 'displacement corridors'.[141]

Conclusion

For many years, both Labor and Coalition governments have supported increasingly severe deterrence measures in an attempt to stem the flow of asylum seeker boats to Australia.

There are some policy differences between the major parties, including whether asylum seekers should be offered temporary or permanent protection and what the size and composition of Australia's formal annual intake of refugees and other humanitarian entrants should be. However, both Labor and the Coalition are in general agreement on many of the key measures in place to deal with these issues, such as mandatory detention for unauthorised boat arrivals and offshore processing arrangements in the Pacific. Given the level of bi-partisan support, it could be argued that the policy differences between the two major parties are minimal.

The Expert Panel on Asylum Seekers recommended an integrated suite of short-term and long-term initiatives to address the issues. Long-term proposals included recommendations that the Government create better migration pathways and protection opportunities for refugees coordinated within an 'enhanced regional cooperation framework'.

Such a framework is already in existence through the Regional Cooperation Framework (RCF) agreed to by the Bali Process in 2011 which aims to develop a more consistent approach to dealing with asylum flows to the region. Both Labor and the Coalition support the Bali Process, but to date there has been little progress in implementing the objectives of the RCF.

The UNHCR has commented on the lack of progress in the region and continues to urge states to work towards creating more protection opportunities through the RCF:

> UNHCR is becoming increasingly concerned by the sharp deterioration in the overall quality of protection for asylum seekers and refugees coming into the region … We understand that the increasing number of people arriving by boat, including growing numbers of families and unaccompanied children, present many complex challenges that must be addressed. But at the heart of any response is the need to carefully balance border management responsibilities with the humanitarian imperatives of protecting, and treating humanely, those people fleeing conflict and persecution in their home countries and the dangers of exploitative boat journeys to Australia. The broad suite of increasingly severe and 'deterrence-based' measures introduced over the past 18 months give UNHCR deep concern as to whether this balance now exists…
>
> We hope that the Regional Cooperation Framework (RCF) and the Regional Support Office (RSO) can now give some practical impetus to cooperation, especially in dealing with a challenge common to most states in the region – that of irregular maritime movements.[142]

While the generosity of Australia's annual humanitarian intakes is widely acknowledged, the magnitude of the issues arising from the growing number of people seeking protection globally poses huge challenges to all destination countries, including Australia. One of the biggest challenges for the government of any destination country is to develop asylum policy that focuses on international, not domestic, concerns and offers sustainable long-term solutions through burden-sharing and regional cooperative arrangements.[143]

139. UNHCR, *Regional cooperative approach to address refugees, asylum seekers and irregular movement*, UNHCR Discussion paper, November 2011, UNHCR website; and A Guterres (United Nations High Commissioner for Refugees), *The changing face of global displacement: responses and responsibilities,* address to the Lowy Institute for International Policy, Sydney, 14 February 2012.

140. J Menadue, A Keski-Nummi and K Gauthier, *A new approach: breaking the stalemate on refugees and asylum seekers*, Centre for Policy Development, Sydney, August 2011, p. 313.

141. A Keski-Nummi, op. cit.

142. UNHCR, *Refugee newsletter*, op. cit.

143. See P Power, 'Ten incremental steps to transform refugee protection in the Asia Pacific region', in B Douglas and J Wodak (eds), *Refugees and asylum seekers: finding a better way*, op. cit.; D Corlett, op. cit.; and A Keski-Nummi, op. cit.

Appendix

Table 1: A summary of key policy similarities and differences

Policy	Coalition	Labor
Offshore processing	Yes	Yes
Boat turnbacks	Yes	Yes
Mandatory immigration detention	Yes	Yes
Regional cooperation, border protection and anti-people smuggling measures	Yes	Yes
Temporary Protection Visas	Yes	No
Humanitarian Program annual intakes	18,750 by 2018–19	27,000 by 2025