Welcome

Welcome to the biannual newsletter of the Andrew & Renata Kaldor Centre for International Refugee Law at UNSW. It summarizes what has been happening in the Centre from January to June 2015. You can find out more about Centre projects, publications, news and events by going to the Centre’s website, which is regularly updated, or by following us on Twitter.

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PROTECTION OF CHILDREN PROJECT

Project Director: Madeline Gleeson

The Forgotten Children Report

In February 2015, the Australian Human Rights Commission’s long-awaited report The Forgotten Children: National Inquiry into Children in Immigration Detention was released.

The report generated a storm of political controversy which sadly drew attention away from its contents. It focused in both a qualitative and quantitative way on the impact of immigration detention on children. The Commission conducted interviews with 1129 children and parents in detention. The findings demonstrated unequivocally that the prolonged detention of children leads to serious negative impacts on their mental and emotional health and development.

The Kaldor Centre hosted two events to refocus attention on the report’s important findings. One was a presentation by the Commission’s President, Professor Gillian Triggs, kindly hosted by King & Wood Mallesons. The other was a presentation by Centre members, Madeline Gleeson and Jennifer Whelan, co-hosted by the Australian Human Rights Centre at UNSW.

Centre members also spoke in the media about the report: Jennifer Whelan, ‘Would you want the Immigration Minister as your legal guardian?’, Crikey (19 February 2015); Madeline Gleeson, ‘Who is legally responsible for abuse of asylum seeker children?’, Crikey (12 February 2015); Madeline Gleeson, ‘It’s been 10 years, how do we still have children in detention?’, Sydney Morning Herald (12 February 2015); Madeline Gleeson, ‘Report calls for royal commission into children in immigration detention: experts respond’, The Conversation (11 February 2015).

For more on the Protection of Children Project, see http://www.kaldorcentre.unsw.edu.au/protection-children.
REGIONAL PROTECTION AND COOPERATION PROJECT

Project Director: Madeline Gleeson

European Approaches to Migration in the Mediterranean

The loss of over 700 lives in a single incident in the Mediterranean on 18 April 2015, following a six-day period in which over 10,000 migrants were rescued, sparked renewed debates in Europe about whether extraterritorial (or ‘offshore’) processing might save lives at sea.

Centre Director, Professor Jane McAdam, released a policy brief entitled Extraterritorial Processing in Europe: Is ‘Regional Protection’ the Answer, and If Not, What Is?.

It examined past European proposals for extraterritorial processing, the possible creation of regional protection centres, and comparisons with Australian and US approaches. It concluded that a protection ‘toolkit’ is needed to help States to provide protection in a safer, and more regular, manner. Until States create measures to allow people to seek protection lawfully, dangerous journeys will continue.

The Centre is tracking debate on European developments through an In Focus brief, which will be regularly updated.

Asia-Pacific Developments

The Centre has produced a series of factsheets on offshore processing in Papua New Guinea and Nauru:

• Australia’s responsibility for asylum seekers and refugees in Nauru and Papua New Guinea
• Australia’s obligations with respect to asylum seeker children who may be sent to Nauru
• Conditions of Australia’s offshore processing centres on Manus Island and Nauru
• Refugee status determination for asylum seekers on Nauru
• Refugee status determination for asylum seekers on Manus Island

The Centre has also produced In Focus briefs on the Resettlement of refugees from Nauru to Cambodia and the Montagnard asylum seekers in Cambodia.

For more information on these issues, see www.kaldorcentre.unsw.edu.au/regional-protection-and-cooperation.

THE HISTORY OF AUSTRALIAN REFUGEE POLICY PROJECT

Project Director: Dr Claire Higgins

How Our Refugee Policy Has Changed Since Fraser

This is an extract of an opinion piece by Dr Claire Higgins, originally published in The Drum (27 March 2015).

Historically, the Immigration Department has always sought to maintain tight control over entry to Australia. During the 1950s and ‘60s control was exercised through racially discriminatory immigration policy. Later, Gough Whitlam described the department as “narrow and hidebound”, and his government allocated some of Immigration’s functions to other departments.

Under Fraser’s leadership, the department was reorganised and gained a dedicated refugee branch to help process and resettle Indochinese refugees. A Special Humanitarian Program also allowed the department to resettle people who fell outside the strict legal definition of refugee but who were nevertheless in desperate need of protection.
Evidence in Immigration Department releases at the time show that under Fraser the department did not detain Vietnamese boat arrivals, and would only place them in quarantine for a short period if necessary. A United Nations representative who inspected these facilities in 1979 reported that officers in charge “show a high degree of compassion, interest and preparedness to help” the asylum seekers. These words stand in marked contrast with the use-of-force provisions now before Parliament.

Thanks to Fraser’s leadership, the Immigration Department demonstrated what controlled immigration could mean: asylum seekers processed in accordance with international refugee law.

Later governments made very different decisions in response to people seeking Australia’s protection. When larger numbers of asylum seekers began to arrive from the late 1980s onward, control was exercised through detention centres in remote locations. The department developed an increased emphasis on compliance and enforcement.

In recent years, Australia has been detaining asylum seekers for longer and longer periods at a cost to the taxpayer of up to $400,000 per person each year, according to the National Commission of Audit. It found that the cost of detention and processing has increased from $118 million a year in 2009–10 to $3.3 billion in 2013–14.

Since the Fraser government launched Australia’s first formal refugee policy, the way governments manage the needs of those seeking protection has changed dramatically. If the new bills pass, Australia will only cement its growing reputation in the international community as a country that uses militaristic force in response to requests for asylum.

Read the full article at ‘How Our Refugee Policy Has Changed Since Fraser’, The Drum (27 March 2015).

For more information on these projects, see www.kaldorcentre.unsw.edu.au/history-australian-refugee-policy.

**LEGISLATIVE UPDATE**

**Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015**

On 3 March 2015, the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015 to the Senate Legal and Constitutional Affairs Legislation Committee. Its report was released on 5 June 2015.

In conjunction with Associate Professor Gabrielle Appleby at the Gilbert + Tobin Centre of Public Law, the Centre made a submission to the Senate Committee. Our assessment of the bill was that:

- it creates a significant risk that Australia’s international legal obligations will be violated, including obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT);
- it confers broad, discretionary powers on individual officers, and there are insufficient legislative safeguards to ensure that such powers are exercised responsibly or in accordance with basic human rights standards;
- it does not contain a clear set of criteria about when force may be used, the degree of force that may be used, or how much consideration an officer must give to the consequences of his or her actions when exercising force; and
- it does not provide for a strong accountability mechanism, and limits the right to an effective remedy for individuals whose human rights or freedoms have been violated.

**PEOPLE**

In January, the Centre welcomed Frances Voon as Executive Manager. Frances came from the UNHCR Policy Development and Evaluation Service in Geneva. She worked for several years in refugee operations in Bangladesh, Jordan and South Sudan. She completed a Masters in Development Studies at the University of Oxford as a John Monash Scholar, where her research addressed policy and assistance for self-settled refugees in protracted situations. She also holds a BA (Hons) and LLB from UNSW.

We would also like to welcome Associate Professor Gabrielle Appleby as a new member of the Centre. Gabrielle joined UNSW Law in February 2015 from the University of Adelaide. Her research focuses on the role, powers and accountability of the executive government; the operation of the Australian federal system; and the independence and integrity of the judiciary. She is the Co-Director of The Judiciary Project at the Gilbert + Tobin Centre of Constitutional Law and is currently a Chief Investigator on the ARC Discovery Project ‘Law, Order and Federalism’.

We bid farewell to Dr Kate Purcell, who has completed her postdoctoral research fellowship at UNSW. Kate’s expertise on the law of the sea was a great asset to the Centre.

Much of the Centre’s work is made possible by the incredible work of interns and volunteers. We would like to acknowledge the contribution of volunteers Divya Ventkataraman and Joe Alizzi and summer and semester 1 interns Alisha Mathews, Mahsa Javam, Katie Green and Vivien Nguyen.

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**BOOK**

*Refugees* shortlisted for NSW Premier’s Literary Awards

Professor Jane McAdam and Fiona Chong’s book *Refugees: Why Seeking Asylum Is Legal and Australia’s Policies Are Not* (UNSW Press, 2014) was shortlisted for the NSW Premier’s Literary Awards.

The judges wrote:

‘*Refugees* is a lucidly written explanation and examination of Australia’s laws and policies in relation to asylum seekers. Jane McAdam and Fiona Chong have made accessibility their focus in this book that has been written for a general audience. By adding their own insights to the personal stories of refugees and asylum seekers and placing them within the context of international and Australian law, the authors have succeeded in writing a book that is both informative and easily understood. The work’s simplicity is its great achievement. In 186 pages of commentary, *Refugees* manages to make sense of the complex laws and policies that dictate Australia’s treatment of asylum seekers. While the authors adopt a clear position in relation to successive governments’ immigration policies, the tone of the book remains measured and its arguments well-reasoned. In this way, *Refugees* carries a calm authority in its consideration of this difficult and divisive area of the law.’

For more details and ordering information, please see [www.kaldorcentre.unsw.edu.au](http://www.kaldorcentre.unsw.edu.au).

**EMERGING SCHOLARS NETWORK**

The Centre has launched an interdisciplinary network of early career scholars in the fields of refugee and migration studies. The aim is to create opportunities for us to collaborate, converse and disseminate our research.

Similar networks currently operate in the UK and North America. We hope that an Australian network will unite the many early career scholars around this country who are studying refugee and migration issues, and allow them to share their ideas across disciplines and institutions. We have invited early career scholars, from honours to postdoctoral level, to help us create this research community.

If you would like to join this network, please email Dr Claire Higgins, c.higgins@unsw.edu.au.
Interns

‘I felt very lucky to be offered an internship with the Kaldor Centre, as I had relied heavily upon factsheets, books and journal articles produced by the Centre for my research projects throughout 2014.

I was pleasantly surprised to learn that my research would involve examining public opinion in Australia, to understand why asylum seekers are perceived so negatively in the mainstream psyche, to understand what drives this opinion, and to examine what refugee lawyers and academics can learn from other sectors working on contentious issues.

Although my project was not strictly related to international law, it was certainly a broad and interesting subject to investigate in as much depth as I could over the 12 week period. I was able to complete an extended discussion paper that explored how media, politicians, psychology, market influences and values-framing shift and shape issues of public opinion. Some of this research will be used to inform an upcoming Kaldor Centre symposium.

I would highly, highly recommend an internship at the Kaldor Centre for future LLB and JD students. You will be embraced by a small and very committed team who are making a huge impact in advocating for human rights law for refugees.’

Katie Green
Social Justice Intern
Semester 1, 2015

‘I have learnt so much from my Social Justice Internship at the Andrew & Renata Kaldor Centre for International Refugee Law. I was excited to work at the Kaldor Centre as I wanted to learn more about an issue I care so deeply about, and improve on my research skills.

I was involved in many projects throughout my internship. I was tasked to help draft factsheets on refugee status determination in offshore processing centres on Nauru and Papua New Guinea, which enabled me to gain in-depth understanding of the problems of these arrangements. I was also involved in researching the European debates on migration in light of the tragic deaths in the Mediterranean Sea. This gave me an opportunity to compare Australian and European policies towards boat arrivals, migration and detention. It made me realise my interest in comparing policies and law.

Interning at the Kaldor Centre has opened my eyes to international refugee law issues and I am looking to pursue this passion in my future endeavours. I want to thank the Kaldor Centre for giving me this opportunity and will definitely be involved in the Kaldor Centre’s events and projects in the future.’

Vivien Nguyen
Social Justice Intern
Semester 1, 2015

If you are a UNSW LLB or JD student interested in undertaking an internship at the Centre, please see the UNSW Faculty of Law Social Justice Internship Program.
A SNAPSHOT OF CENTRE EVENTS

Representing Refugees Today (Gilbert + Tobin, 17 June 2015)

This event, co-hosted with RACS, provided an overview of some of the most significant changes affecting people seeking asylum in Australia. Panel members discussed how various actors in the legal sector are responding, including through innovative approaches to advice and casework, and challenges before the courts.

The event was opened by Renata Kaldor AO.

Speakers included:
Jemma Hollonds, Senior Solicitor, RACS
Michelle Hannon, Partner, Pro Bono Services & Corporate Responsibility, Gilbert + Tobin
David Hume, Barrister, Six Wentworth Selborne Chambers

A video from this event is available at: www.kaldorcentre.unsw.edu.au/event/representing-refugees-today.

The Forgotten Children: An Evening with Gillian Triggs (King & Wood Mallesons, 14 May 2015)

Professor Gillian Triggs, President of the Australian Human Rights Commission, discussed the findings of The Forgotten Children report, including the impact of immigration detention on the health, well-being and development of children, and whether Australia’s laws and policies in relation to children in detention are consistent with international law.

For more information on this event, see: www.kaldorcentre.unsw.edu.au/event/forgotten-children-evening-gillian-triggs.

The Forgotten Children: Australia’s Treatment of Asylum Seeker and Refugee Children on the Mainland and Offshore (UNSW Law, 23 April 2015), co-hosted with the Australian Human Rights Centre, UNSW

On 23 April, the Kaldor Centre and the Australian Human Rights Centre co-hosted a seminar on the treatment of asylum seeker children detained both on the Australian mainland and offshore on Nauru.

The purpose of the seminar was to introduce the Australian Human Rights Commission’s Forgotten Children report, its key findings, and some of the questions it raised. Jennifer Whelan, a project director at the AHRCentre and a member of the Kaldor Centre, opened the discussion by introducing the current context in which asylum seeker children are detained in Australia and Nauru, and explained the functions that an independent guardian for unaccompanied children should have. Madeline Gleeson, a Research Associate at the Kaldor Centre, explained how the interests of detained asylum seeker children are assessed differently from those of other children, and why a proper best interests assessment is not being performed prior to the transfer of children from Australia to Nauru. She also discussed the findings of the Moss inquiry into allegations of abuse and misconduct within the Nauru detention centre, and the latest developments in Australia’s treatment of asylum seeker and refugee children.

A podcast from this event is available at: www.kaldorcentre.unsw.edu.au/event/forgotten-children.
Guest Speaker: Tom Porteous, ‘Global Challenges to Refugee Protection: Lessons from the Middle East and Europe’ (UNSW Law, 30 April 2015)

Tom Porteous is the Deputy Program Director at Human Rights Watch, based in Washington DC. He oversees Human Rights Watch’s work on refugees globally, and also supervises all of Human Rights Watch’s work on the Middle East and Europe.

Tom’s insights into the world’s current refugee crises provided a sobering analysis of global protection needs, and shed light on Australia’s responses to asylum seekers within a comparative context.


PUBLICATIONS & MEDIA

Book Chapters

Refereed Journal Articles

Joyce Chia, Jane McAdam and Kate Purcell, ‘Asylum in Australia: “Operation Sovereign Borders” and International Law’ (2014) 34 Australian Year Book of International Law 33–64


Research Reports/Manuals

Submissions
Madeline Gleeson, Submission to the Senate Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru (30 April 2015)

Jane McAdam, Submission to the World Humanitarian Summit Regional Consultation for the Pacific (27 May 2015)

Jane McAdam, Gabrielle Appleby and Claire Higgins, Submission No 8 to the Senate Legal and Constitutional Affairs Committee on the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015 (7 April 2015)
Media: Online and Print


Madeline Gleeson, ‘It’s Been 10 Years, How Do We Still Have Children in Detention?’, Sydney Morning Herald (12 February 2015)


Claire Higgins, ‘How Our Refugee Policy Has Changed Since Fraser’, The Drum (27 March 2015)


Jane McAdam, ‘Australia’s Unsustainable Approach to Asylum-Seekers’, The Interpreter (Lowy Institute) (1 May 2015)


Jane McAdam, ‘What To Do About Climate Migration’, The Interpreter (Lowy Institute) (13 April 2015)

Jane McAdam, ‘Climate Change Brings Disasters on Steroids’, Sydney Morning Herald (16 March 2015)

Jane McAdam, ‘Our Obligations Still Apply Despite High Court Win’, Sydney Morning Herald (30 January 2015)

Jennifer Whelan, ‘Would You Want the Immigration Minister as Your Legal Guardian?’, Crikey (19 February 2015)

Tamara Wood, ‘Could the Government Be Held Liable for People Smuggling?’, The Drum (16 June 2015)

Media: Radio


Jane McAdam, ‘Migration with Dignity’ FM4 Austria (30 June 2015)

Jane McAdam, Interview on ABC Radio Mackay Mornings (18 March 2015)

Academic/Professional Conferences and Presentations


Claire Higgins, Australian Foreign Policy Discussion Group, University of Melbourne (2 June 2015)

Jane McAdam, Co-Rapporteur, Intersessional Meeting of the ILA Committee on International Law and Sea-Level Rise (Fridtjof Nansen Institute, Oslo, 12–13 June 2015)


Jane McAdam, Planned Relocations in the context of Disasters and Environmental Change, including Climate Change (UNHCR/Brookings/Georgetown University, Bellagio, 18–22 May 2015)

Jane McAdam, ‘Climate Change Migration: Prospects and Policy’, ANU Climate Change Institute (Canberra, 24 March 2015)

Jane McAdam, Relocation in the context of Climate Change: In Search of a Common Understanding of Terms: Expert Meeting (Brookings, DC, 13 February 2015)
Jane McAdam, Regional Workshop on Temporary Protection Status and/or Humanitarian Visas in Situations of Disaster (Regional Conference on Migration and The Nansen Initiative, San José, 10–11 February 2015)

Community/Student Engagement and Presentations
Fiona Chong, Roseville Refugee Group (Roseville, 15 March 2015)
Madeline Gleeson, Amnesty Youth Network expert panel: ‘Children in Detention’ (Sydney, 20 May 2015)
Madeline Gleeson, Amnesty International panel: ‘Nauru’s Forgotten Children’ (Berry, 31 January 2015)

Other Papers/Presentations