

## Factsheet

# AUSTRALIA'S REFUGEE POLICY: AN OVERVIEW

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*Australia's key refugee policies briefly explained, including turnbacks, offshore processing, immigration detention and the situation of people in the 'legacy caseload'.*

### What is the scope of Australia's program for taking in refugees?

Australia's [Refugee and Humanitarian Program](#) comprises two sub-programs: the onshore protection program and the offshore resettlement program. The onshore protection program is available to people seeking asylum who arrived in Australia on a valid visa (for example, as a student or a tourist). People in this category are able to apply for a permanent [protection visa](#) which allows holders to live and work in Australia as permanent residents. (See our factsheet on [Refugee Status Determination in Australia](#).) Since September 2013, the onshore protection program has excluded people who arrived in Australia by boat or without a valid visa.

The offshore resettlement program contains [three categories](#): Refugee, Special Humanitarian, and Community Support Program (CSP). The Refugee category applies to people living in other countries who have been identified as refugees by UNHCR and referred to Australia for resettlement. The Special Humanitarian category applies to people who are subject to substantial discrimination in their home country, and are proposed for the visa by a person or organisation in Australia; this includes immediate family members of people who have been granted protection in Australia. The CSP, begun in July 2017, enables refugees to be resettled with support from individuals, community groups or business. There is an annual limit of 1,000 CSP places, which are [included in the total](#) of Australia's intake.

The Australian Government has announced that it would increase the total Refugee and Humanitarian Program intake from 13,750 places in 2013-14 to [18,750 places](#) in 2018-19.

### What is Operation Sovereign Borders?

The Australian Government introduced [Operation Sovereign Borders](#) (OSB) in September 2013, as 'a military-led border security operation aimed at combating maritime people-smuggling and protecting Australia's borders'. Under this [policy](#), anyone attempting to reach Australia by boat is turned back to their country of departure, or sent to an offshore

processing facility. The policy also incorporates activities to [disrupt and deter people smuggling](#) within the region.

Under OSB, vessels patrol Australia's territorial waters and intercept boats carrying asylum seekers. Australian authorities either return vessels to just outside the territorial seas of their last country of departure or transfer asylum seekers directly to the territory of another government. Few details are publicly available regarding turnback operations due to the Government's policy of not generally releasing information about on-water operations. However, turnbacks raise a number of human rights concerns and may breach Australia's international legal obligations. For more information, see our factsheet on [Turning Back Boats](#).

### **What is Australia's policy on offshore processing?**

Since 13 August 2012, any person arriving in Australia by sea without a valid visa has been liable to removal to Manus Island (in Papua New Guinea) or Nauru for processing, even if they applied for asylum immediately upon arrival in Australia. Since July 2013, successive Australian governments have stated that no refugees will ever be resettled from Nauru or PNG in Australia. Some refugees may be able to remain in Nauru or PNG on either a temporary or permanent basis, although integration prospects are limited. A small number of refugees were relocated from Nauru to [Cambodia](#) under a controversial agreement with Australia, and [the United States](#) agreed to resettle some refugees from Nauru and PNG.

[UN experts](#) have found this offshore processing regime to be in breach of international human rights standards. Under international law, Australia is still [responsible](#) for upholding the human rights of asylum seekers it sends offshore. For more information, see our series of [factsheets and research briefs](#) on offshore processing.

### **What happens to asylum seekers in Australia who arrived without a valid visa?**

The Australian Government refers to this category of asylum seekers as ['illegal maritime arrivals'](#) and ['unauthorised air arrivals'](#). Asylum seekers who arrive without a valid visa cannot apply for permanent protection in Australia, but can only apply for [a three-year Temporary Protection Visa \(TPV\)](#) or [a five-year Safe Haven Enterprise Visa \(SHEV\)](#). [Under these visas](#), holders are permitted to work and study in Australia, however must continue to re-apply once the visa lapses.

Around 30,000 people seeking asylum who arrived in Australia by boat between 13 August 2012 and 1 January 2014 were not subject to removal to Manus Island and Nauru under OSB. This group is sometimes referred to as the 'legacy caseload'. People in this group were barred from making an application for protection for up to four years after arriving in Australia. Since 2015, their asylum claims are being assessed through a 'fast-track process' which entails more limited procedural safeguards than the process available to other protection applicants. This group faces numerous challenges, including cuts to publicly funded legal assistance and income support. For more information, see our factsheet on the ['Legacy Caseload'](#) and our research brief on ['Fast tracking' refugee status determination](#).

Article 31 of the Refugee Convention states that refugees ought not be penalised for illegal entry into countries where they are seeking protection. This recognises that the very nature of refugee flight may make it dangerous or impossible to get a passport and visa.

### **What is Australia's policy on immigration detention?**

Since 1992, Australia has had a policy of mandatory immigration detention, which requires all non-citizens without a valid visa to be detained until they are granted a visa or leave the country. This includes people who entered the country on a valid visa who overstayed, breached their visa conditions or had visas cancelled, and people who entered Australia without a valid visa.

The Minister has a non-compellable discretion to release people from closed detention, and the majority of people seeking asylum are either in the community on bridging visas or in 'community detention'. People in community detention may live at designated addresses within the community, with some reporting requirements and other restrictions. While the number of people in closed immigration detention in Australia has reduced, the [average length of time detention](#) has increased from five years ago. There is no time limit on immigration detention, and individuals cannot challenge the legality of their detention. Many people remaining detained for prolonged – and possibly indefinite – periods, with serious consequences for people's mental health.

For more information, see our research brief, '[Immigration detention in Australia](#)'.