

Factsheet

TURNING BACK BOATS

Last update: April 2019

To deter boat arrivals, in 2013 Australia introduced a military-led operation to turn around vessels carrying people seeking asylum.

What is Australia's policy on turning back boats?

In September 2013, the newly elected Coalition Government introduced '[Operation Sovereign Borders](#)' (OSB), a military-led border-security initiative which incorporates offshore processing of asylum seekers, activities to disrupt and deter people-smuggling, and interception of boats. Under OSB, the Government's policy is to turn back boats '[where safe to do so](#)'. This includes '**turnbacks**', where vessels are returned to just outside the territorial seas of the country of departure (eg. Indonesia), and '**takebacks**', where Australia works with a country of departure (eg. Sri Lanka and Vietnam) to return those aboard, either by plane or an at-sea transfer. Very little information is publicly available about the conduct of these operations, due to Government's policy not to disclose details of 'on-water matters'.

Does Australia check if people need protection before turning back boats?

Due to the lack of transparency about these operations, it is unclear whether all people turned back at sea are given an opportunity to raise a claim for asylum. During takebacks, Australia has used an '[enhanced screening](#)' process at sea by which it claims to assess if people engage Australia's protection obligations. However, [UNHCR](#) and [international law experts](#) have raised concerns about enhanced screening, noting that conditions at sea are [unlikely to afford a proper and fair opportunity](#) for people to raise a need for protection.

How many boats has Australia turned back?

According to the Minister for Home Affairs, [33 vessels have been intercepted](#) under OSB, with 827 people returned to their country of departure or origin as of September 2018.

Is it legal to turn back boats?

In 2014, the High Court of Australia [narrowly held](#) that turning back boats was permitted under Australian law. Importantly, the judges in that case did not examine the legality of turnbacks under international law.

Under international law, Australia has no right to intercept and turn back boats on the high seas (seas not part of any country's jurisdiction) without the consent of the country in which the boat is registered. While Australia is permitted to 'exercise the control necessary' to

prevent infringement of its immigration laws within its waters, that right is limited by Australia's obligations under international refugee and human rights law.

Australia has international obligations to assist those in distress at sea and to protect asylum seekers from *refoulement* (return to countries where they face a risk of persecution and other serious harms). If Australia turns back boats that are unseaworthy, or returns people to harm, it will be in breach of international law. [UN representatives have found Australia to be in breach](#) of these and other international obligations.

What happens to people who Australia turns back at sea?

Australia does not monitor [\(p120\)](#) what happens to people it returns under OSB. [In Indonesia](#), several boats are reported to have run out of fuel or run aground after being left at the edge of Indonesian waters by Australian authorities. [In Sri Lanka](#), passengers are generally taken into custody, where at least one returnee has claimed he was tortured. [In Vietnam](#), several returnees have been charged and imprisoned, despite assurances from the Vietnamese Government that no returnees would face punishment for having fled. A number of returnees have fled their places of origin a [second time](#) and been found to be refugees by UNHCR.

Do turnbacks save lives?

The Government [claims](#) that turnbacks deter dangerous journeys to Australia by boat, thus avoiding [deaths at sea](#). On the other hand, Australian navy officials have [noted](#) that turnback operations involve [a high degree of risk](#). Under OSB, reported [risks](#) to the life and safety of passengers, crew and Australian personnel have included [passengers going overboard](#) and acts of [sabotage](#). Some people returned by Australia to their countries of origin have reportedly faced [torture](#) and [imprisonment](#). As turnbacks hamper people fleeing persecution from finding safety and do not address the underlying conditions that cause people to flee, it is possible that people are simply forced into dangerous situations elsewhere.

What are the alternatives to turning back boats?

[Alternatives that prioritise compliance](#) with Australia's international obligations and the safety of those travelling by sea include: good-faith search and rescue operations; access for all those intercepted to proper refugee status determination procedures on land; and the facilitation of alternative pathways, which would allow those seeking asylum to avoid dangerous sea journeys while reducing opportunities for smuggling and trafficking rings.

For further information see our research brief, '[Turning back boats](#)'.

See also Violeta Moreno-Lax, [The interdiction of asylum seekers at sea: Law and \(mal\)practice in Europe and Australia](#) (Policy Brief 4, Kaldor Centre for International Refugee Law, May 2017).

[Where to from here? Report from the Expert Roundtable on regional cooperation and refugee protection in the Asia-Pacific](#) Kaldor Centre for International Refugee Law, December 2016.