



REFUGEE SUNDAY EDUCATION SHEET

The myths that hurt refugees

HOW TO USE THIS SHEET

This sheet shows how recent immigration laws designed to "protect the integrity of Australia's Humanitarian Program" actually result in punishing the very people the system was designed to protect; refugees.

Page 1 describes the law and how it operates. Page 2 shows how the law impacts on refugees, causing unnecessary suffering. Page 3 compares the rights and entitlements of refugees and asylum seekers in Australia. Page 4 examines the myths that have eroded public sympathy and led to harsh treatment of onshore asylum seekers and refugees. In doing so, it shows why the justifications for these new laws are based largely on myths.

WHO ARE REFUGEES?

Many of us have a mental picture of a refugee as a poor, homeless, uneducated person who decides to come to Australia for a better life. But the truth is very different.

Refugees are people like you and me that have been targeted for abuse because of who they are or what they believe. In danger from, or unable to be protected by, their own government, they are forced to flee their country to escape attacks, imprisonment, torture or even death.

Refugees flee after terrible ordeals. They may have been tortured, imprisoned, raped or seen their family killed. Most have had to leave everything behind, including family and friends. Despite this and the fact that they had no choice but to flee, Australia places every man, woman and child in detention who does not have a visa, often in poor conditions and for long periods of time.

BACKGROUND

In January 1992, the Hawke Labor Government introduced harsh new laws that effectively punished boat people for landing in Australia without visas by making it mandatory for every man, woman and child seeking refuge in Australia without a visa to be held in detention for an indefinite period until given a visa or deported.

In October 1999, the Howard Liberal Government issued new laws that effectively further punished boat people for landing in Australia without a visa by denying them the right to apply for permanent refugee status for 3 years. Since then, only asylum seekers who apply overseas or enter Australia with a visa can apply for Permanent Protection Visas (PPVs). Asylum seekers arriving without visas are prohibited. Instead, they can only apply for 3-year Temporary Protection Visas (TPVs).

As a result, those seeking refuge without visas are held in detention until either recognised as refugees and given a visa or deported. Even if they satisfy the government's increasingly strict definition of a refugee when in detention, upon release they are only eligible for a 3-year TPV. Unlike PPVs, TPVs deny the holder of permanent residence, family reunion rights, accommodation, English lessons, job-search assistance and government-funded settlement services (see p 3).

In September 2001, as these TPV refugees prepared to reapply for refugee status to get their permanent visas, the Federal Government introduced new restrictions on their eligibility for permanent visas. Under these new laws, current TPV holders are prohibited from obtaining PPVs (and thus family reunion) if they spent more than 7 days in a 'safe' country en route to Australia and did not apply for a PPV by 27 September 2001. Of the 6,535 refugees with TPVs, 2,785 did not apply by the cut-off date, many because the Dept. of Immigration had advised them it was unnecessary.

Although the definition of a 'safe' country – where one could have 'sought' and 'obtained' 'effective protection' – is not clear yet, most of the 2,785 TPV holders will likely be affected. (declared under the Minister's discretionary powers)

At the same time, the Federal Government introduced two new types of TPVs designed to punish refugees crossing borders in search of protection. The first, TPV subclass 447, prevents unauthorised boat people arriving in a part of Australia excised from the 'migration zone', like Christmas Island, from obtaining a permanent visa if they spent more than 7 days in a country declared 'safe' under the Minister's discretionary powers. Even if sent to the Pacific, they can only apply for a TPV, and if successful still must re-apply for refugee status every 3 years. Since TPVs are denied access to family reunion (i.e. to sponsor a wife or child) and cannot return if they leave Australia to visit family, they are effectively forced to choose between safety in Australia and seeing their family again. The second, TPV 451, denies those assessed as refugees in 'transit' countries like Indonesia from obtaining PPVs and thus family reunion. Instead, they can only apply for a 5-½ year TPV and a PPV after 54 months. During this time, they cannot apply for family reunion and live in fear of one day being deported back to the regimes from whom they fled. When they are finally able to apply for PPVs, they will also have to demonstrate that they did not stay in a 'safe' country for more than seven days.

In signing the 1951 Refugee Convention, Australia recognised that states shall:

- not impose penalties, on account of their illegal entry, on refugees coming directly from a territory where their life or freedom was threatened (Article 31);
- accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals (Article 23);
- issue to refugees lawfully staying in their territory travel documents for travel outside their territory (Article 28).

How TPVs impact on refugees

Before TPVs were introduced, the Government provided all refugees with 13-26 weeks accommodation, income support and English classes: the minimum required by international refugee conventions. Now, however, they are eligible only for a discretionary special benefit, which is severely means tested and often paid at lower rates. They are entitled to work and Medicare, but language difficulties and temporary visas make employment hard to find. Instead, they are vulnerable to exploitation by low-wage employers.

The human toll has been enormous. According to a recent Queensland Government report, the new visa has severely limited the capacity of TPV refugees to participate in everyday life. Denying help to these refugees - many of whom were victims of trauma and torture and spent years languishing in detention centres - simply prevented their recovery, as they became more and more isolated, the report said. Withholding English lessons and employment assistance restricted their ability to find work and become self-supporting, making them even more dependent on charity.

Welfare agencies and state governments, who have had to pick up the tab for Federal cutbacks, have roundly criticised the scheme, accusing Canberra of 'cost-shifting'. With government-funded welfare agencies told to stop helping TPV refugees,

churches have been overwhelmed by requests for support and are now providing temporary housing, clothes, blankets, food, volunteer interpreters and English lessons. Despite the fact that TPVs flout UN covenants stipulating that refugees should not be penalised for fleeing across borders without visas (see box), the present Immigration Minister has criticised groups helping TPV holders and urged the states not to offer assistance. Instead, they must fend for themselves or turn to friends, relatives or charities.

More alarming is the way they are 'dumped' on community groups after being released from detention with little money or support. After being locked up, often for years, in remote camps at Port Hedland, Curtin and Woomera, TPV refugees from Iraq and Afghanistan are bussed thousands of kilometers and then virtually abandoned in the cities. The practice of being dumped is extremely disorientating and stressful.

80% of refugees have been tortured or traumatised by horrifying experiences. Denying permanent visas leaves them with the fear and uncertainty of being returned to such horrors, intensifying their anguish, apprehension and stress.

Although the Government's 'get tough' policy may win votes, the new measures are unlikely to actually deter people, as few could envision what awaits them once they arrive in Australia. Instead, it appears present policies will only create a second class of refugee.

Asylum Seekers Living in the Community

Asylum seekers who clear immigration and then claim asylum are even worse off. They are denied government funding, welfare payments, education and housing. Worse still, if they do not lodge an application for asylum within 45 days of arrival, they are denied work permits and Medicare, leaving them with no income or hospital or medical cover. They are totally dependent on charities for food, clothing, housing and medical help. Many already suffer from previous health complaints due to malnourishment, depression, or the effects of post-traumatic stress disorder and cannot properly recover without proper health care.

The Rights and Entitlements of Refugees and Asylum Seekers in Australia

	Permanent Protection Visas <i>(Entitlements of refugees granted a protection visa offshore)</i>	Temporary Protection Visas <i>(Entitlements of refugees arriving without visas after initial detention)</i>	Bridging Visas <i>(Entitlements of asylum seekers who cleared immigration and then claimed asylum)</i>
Income Support	Granted immediate access to the full range of Centrelink benefits	Access to Special Benefit only (conditions apply). Those with over \$5,000 cannot apply.	Denied Centrelink benefits. May be eligible for income support after 6 months.
Work Rights	Granted	Granted	Denied if they do not lodge an Asylum claim within 45 days of arriving.
Job Assistance	Granted employment assistance, including job network & intensive assistance programs.	Denied. Problems finding work due to visa uncertainties and lack of English.	Denied. Problems finding work due to visa uncertainties and lack of English.
Medicare/ Health Care	Granted Medicare and a Health Care Card	Granted Medicare, including access to torture and trauma counseling.	Denied Medicare if they do not lodge their Asylum claim within 45 days. Some are granted torture & trauma counseling.
Settlement Support	Access to government settlement support (torture & trauma counseling, on-arrival accommodation, household formation support, case management, early health assessment).	Denied settlement support services and accommodation after being released from detention. Denied help with house bonds.	Denied access to accommodation and other settlement support services. Denied help with house bonds.
English Classes	510 hrs of free English classes. Children given free intensive English classes.	Denied standard 510 hrs of free English classes. Children denied free intensive English classes.	Denied standard 510 hrs of free English classes. Children denied free intensive English classes.
Education	Access to education like any permanent resident, including access to HECS.	Access to intensive English & public schools. TAFE classes charged at overseas student rates. Must pay up front tertiary education fees. High cost thus prevents study.	Access to intensive English classes and public schools, but charged overseas student rates (around \$4,000 for a school year). High cost thus prevents study.
Family Reunion	Eligible to sponsor family members to reunite with them in Australia	Denied split-family reunion rights.	Denied split-family reunion rights while case being processed.
Travel	Permitted to travel abroad & return.	No right of return after leaving Australia (i.e.	No right of return.

Myths and Facts about Refugees in Australia

X 1. Most Refugees are Just Migrants

Refugees should not be confused with migrants. Unlike migrants, refugees are forced to flee to seek protection. By definition, they do not have a choice and cannot return home.

X 2. Refugees are "Illegal Immigrants"

Refugees who flee to Australia by boat or plane without a visa are often branded "illegals" by politicians, which erodes public sympathy and justifies harsh government policies. Under international law, however, there is nothing 'illegal' about their actions. In fact, in helping draft and signing the 1951 Refugee Convention, Australia recognised that states should not penalize refugees for fleeing to other countries without visas. So under international law, refugees are not 'illegals'. They are entitled by law to our protection and deserve a "fair go". If anything, Australia is the one breaking the law when it penalises refugees without visas.

Fact: In the year ending 1999, when temporary protection visas were introduced to target those seeking refuge without a visa, 97% of Iraqi and 93% of Afghani asylum seekers arriving without a visa in Australia were recognised as genuine refugees by the Government. The overall recognition rate was over 80%.

Question: Why do recognition rates for Afghans differ between UNHCR, Australia and New Zealand? Why were nearly 100% of the asylum seekers taken from the M.V. Tampa by New Zealand recognised as refugees, while less than half of those sent by Australia to Nauru and PNG found by Australian officials to be refugees? The timing is everything. In New Zealand, determinations were made while Taliban was in power in Afghanistan, but assessments in the Pacific were done after the fall of Taliban when more of those seeking refuge could return home in safety.

Question: Does this mean it is safe to send all Afghans back home? No, while it may be safe for some groups to return, it may not be safe for all groups or individuals. Some may wish to return home, as most refugees do, but they should not be sent home unless made aware of the dangers of returning. Afghanistan has an interim administration, but not a functioning government that can provide protection from persecution. Individual circumstances must also be considered, along with the health of children, pregnant women and split families.

Fact: UNHCR has advised the Australian Government not to send Afghans home until it is able to declare that it is safe to return.

X 3. Refugees are "Queue-Jumpers"

Australia's primary 'obligation', as one of 135 countries that have signed the 1951 Refugee Convention, is to protect refugees arriving 'onshore'. But Australia also has a 'voluntary' offshore program, which allows overseas refugees to be resettled in Australia, partly to assist Australian families in reuniting with their relatives abroad. Until 1996, the number of refugees arriving onshore fluctuated, while Australia nominated a fixed number of places for offshore refugees. However, in 1996, the Government made a conscious decision to take away a place from its offshore program for every refugee arriving onshore, which upset many Australian families. It then announced that refugees should stay overseas and 'join the queue' instead of coming to Australia. When they did not, it denigrated them as 'queue-jumpers', falsely implying they deliberately took someone else's place. Playing on the Australian public's sense of fair play, it was then able to gain great support for punitive measures like mandatory detention, sending refugees to detention camps in the Pacific, and denying boat people without visas access to settlement services, family reunion and permanent protection visas, (see page 2).

There are, however, major problems with this argument. **First**, it was the Government, rather than onshore refugees, that made a conscious choice to take away offshore places. **Second**, refugees do not start in a queue or flee in an orderly manner. They are forced to flee without warning and usually without a planned destination. They do not go to travel agencies or consult the Lonely Planet Guide, and people smugglers are not about to say "don't go to Australia". The expectation that they should join a queue is thus completely unreasonable. **Third**, and most important, there is no standard or orderly queue where people can wait in line to be selected to enter Australia. In countries like Iraq or Afghanistan (the main source of Australia's boat people), there is no Australian embassy and thus no queue to jump. In other countries, Australian embassies will not even let asylum seekers in for fear they may claim asylum. Australian officials also rarely visit refugee camps to see whether people are safe in those camps. Countries like Iran and Pakistan have in fact frequently forcibly repatriated refugees back to Afghanistan, which is why refugees are forced to keep moving in search of safety. Often there are road blocks, curfews and travel permits that restrict peoples movements and make it dangerous and expensive to get to an embassy or even leave the country to apply elsewhere. Where there are queues, they often do not move. In the Australian High Commission in Kenya, for example, applications sit in a pile for 18 months before an official even looks at them. If you were a refugee fearing the threat of persecution, would you "wait in line"? The reality is that 'queue jumping' is simply a myth designed to disparage refugees and prevent Australians being sympathetic.

Fact: Most states between the Middle East and Australia are either not signatories to the 1951 Refugee Convention or are unable to protect refugees so they are forced to seek protection elsewhere.

Fact: The more states try to bottle-up refugee flows, the more likely it is they will turn to people smugglers in their desperation. The only solution is for each state to contribute to a global solution by working toward preventing the violence, persecution and war that forces refugees to flee and giving more assistance to refugees before they are forced to turn to people smugglers.

Fact: The more countries like Australia place immigration officers in or near refugee producing countries, and the more they offer real solutions, as opposed to letting people languish in squalid refugee camps, the less likely it is that refugees will become so desperate as to engage people smugglers.

Fact: UNHCR has recognised over 500 refugees in Indonesia, but Australia has only agreed to take 20 from this 'official queue'.

X 4. Refugees are "forum shoppers"

Boat people are often disparaged as "forum shoppers"; a term coined by lawyers to describe people who shop-around for the most lenient court to hear their case. When applied to refugees, the term implies that refugees look for a country with lax immigration laws, and conversely, that unless Australia maintains harsh deterrents like mandatory detention, it will be 'swamped by refugees'. It is a negative term, used to undermine the legitimacy of boat people that flee to Australia. However, it is also misguided. Refugees do not go to travel agencies or consult the Lonely Planet Guide to compare countries. Unlike economic migrants, who choose their country, refugees are usually so desperate to escape brutal regimes like Saddam Hussein's in Iraq that they take the first opportunity to flee, even if it means spending a family's entire life savings to get one family member on a leaky boat to Australia.

X 5. Refugees will "Swamp" Australia

Ever since the first Chinese migrants came to Australia during the 1850s Gold Rush, Australians have feared being 'swamped' by Northern hordes. This fear has often been used to justify harsh policies to deter refugees, such as mandatory detention and withdrawing settlement assistance to TPVs. The argument now is that if Australia let down its guard, it would be 'flooded' by refugees. Refugee influxes, however, are not the result of harsh deterrents. They stem from events like the massacre of pro-democracy activists in China's Tiananmen Square in 1989 or Taliban's ethnic cleansing of the Hazara people in Afghanistan. More importantly, most seek shelter in neighboring undeveloped countries. Less than 18% of the world's refugees go to Western countries. Far fewer reach Australia due to its isolation. It is this 'tyranny of distance' that deters refugees not Australia's harsh treatment of refugees. If Australia loosened its policies, it is unlikely that there would be a huge increase in refugees.

Fact: The world has 21 million refugees and half are children. While over 300,000 refugees made their way to Europe and claimed asylum in 2000, a mere 8,257 reached Australia and only 4,174 were given asylum. Meanwhile, Iran and Pakistan each hosted over a million Afghan refugees.

X 6. Refugees 'Don't fit in' and take Jobs

Fact: Australia is a nation of refugees and immigrants, and to say they have not 'fitted in' simply denies our history. Our national identity was shaped by Australia's rich cultural experience and Australians have taken great pride in this fact.

Fact: Refugees, like migrants, create demand for goods and services, which stimulates production and creates jobs. They also bring new skills, pay taxes, which fund government services, and increase the size of the labour force, adding to Australia's productive capacity.

Fact: Unemployment mostly results from economic adjustment.

Fact: Australia will take 122,000 immigrants in 2002. Over 60,000 people deliberately overstayed their visas in 2001. Most were Western tourists and 50% worked illegally. In 2002, Australia's total refugee and special humanitarian intake is capped at 12,000 places.

X 7. Australians Don't Want Refugees

Many people assume that Australians do not want refugees. Yet, the public's response to Kosovar and Timorese refugees demonstrated the opposite. Australians can be very sympathetic to the plight of refugees if they are properly informed of the reasons for their flight and the horrific ordeals they have been through.

X 8. There is no Alternative to Arbitrary Detention

Australia's detention system is arbitrary for three main reasons. First, it is **mandatory**. Every man, woman and child without a visa is automatically detained on arrival. Second, it is for an **indefinite** period because they are held until they are either given a visa or deported. Third, because it is **non-reviewable**. A detainee cannot challenge the lawfulness of their detention in a court of law, and the courts cannot order the release of a detainee.

Australia is the only country in the world with this type of mandatory, indefinite and non-reviewable detention. There is an alternative. Australia could easily remodel its detention system on the best practice models of Sweden, Canada or New Zealand. In these countries people are still detained for health, security and identity checks, but they are not subjected to the cruel, inhuman and arbitrary aspects of detention described above.

Fact: Australia already has an alternative to detention. Not every asylum seeker is detained until given a visa or deported. Those that enter Australia with a valid visa and then claim asylum are not detained at all. Instead, they are allowed to live in the community.

X 9. The Debate is Over Ending Detention

People often cite that 60% of Australians are in favor of detention as if this 'popular will' cannot be challenged. However, the question is always centres around whether or not we should have detention even though refugee organisations have not called for an end to detention *per say*. In fact, the Government's right to detain people for health, security and identity checks is even recognised in international law. The real question is not whether we have detention. It is whether we have a humane system of detention or a cruel, inhuman and arbitrary detention system that produces the miasma of despair and self harm that haunts the detention centres. If Australians had a choice between a more humane system and a cruel, inhuman and arbitrary system, the polls would be different.

X 10. The solution is to send refugees to the Pacific

Recently, Immigration Minister Philip Ruddock claimed that the Pacific solution – using the navy to intercept asylum seekers en route to Australia and then forcibly sending them to the Pacific to be detained until given a visa or deported – had successfully stopped people smuggling because those with aspirations of getting to Australia had not had those aspirations realised. The comment raised the whole issue of whether a country is justified in deterring and or punishing those seeking refuge in the name of putting people smugglers out of business.

The Pacific Solution is certainly not the international solution that the 134 signatory States to the 1951 Refugee Convention have sought to achieve. In fact, it directly undermines the ability of these countries to achieve an international solution based on sharing the world's burden rather than each state shirking their responsibility (Australia has signed the Convention and its primary responsibility under the Convention is towards refugees arriving onshore). First, in deterring refugees, it simply pushes them on to other countries, or worse still, in their increasing desperation, into ever more risky voyages. Through further restricting official channels for asylum seekers, it also creates more pressure to circumvent official channels, for example, by obtaining false documents to enter Australia by air. Second, it provides a poor international precedent. What if other countries paid poorer nations to take their refugees?

The Pacific Solution also comes at a heavy price. First, it penalises victims rather than people smugglers. Second, it has already cost over \$500 million and spending for 'border protection' over the next four years is forecast to cost \$2.8 billion. All for the sake of dealing with around 4,000 arrivals per year.

Then there is the cost to our international reputation. Far from creating the impression that Australia is trying to find a cooperative international solution to alleviate the factors that drive people to flight, the Pacific solution creates the impression that we are dumping our problems on small less-developed and aid-dependent nations, like Nauru. In signaling a further withdrawal from the Refugee Convention, it may also encourage other developed and less developed nations - such as Iran and Pakistan, which have borne the brunt of mass influxes in the millions from Afghanistan - to abrogate their responsibilities. Indeed, Pakistan even cited Australia's increasingly strict policies as one reason for shutting its border to Afghan refugees in 2001.

The National Program on Refugees and Displaced People operates under the Christian World Service Commission of the National Council of Churches in Australia. For information on the Program or Refugee Sunday, or to subscribe to the Program's Newsletter, please contact James Thomson on (02) 9299 2215 or email: jthomson@ncca.org.au