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# DIPLOMAMUNKA

## MA THESIS

A CSENDES-ÓCEÁNI MEGOLDÁS:

A 2000-ES ÉVEK LEGVITATOTTABB BEVÁNDORLÁSPOLITIKAI IRÁNYVONALA

PACIFIC SOLUTION: THE MOST CONTROVERSIAL

IMMIGRATION POLICY OF THE 2000S

TÉMAVEZETŐ:

GALL CECÍLIA

KÉSZÍTETTE:

SOPRONI TAMÁS

ANGLISZTIKA MA

POSZTKOLONIÁLIS IRODALMAK ÉS

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## ABSTRACT

In my paper, it is my aim to give an overview of Australia's immigration policies in the 21<sup>st</sup> century, and to examine and interpret the so-called Pacific Solution's alleged results in the decrease of unauthorised entries. In this paper, I shall attempt to defend the view that the policy as such was in fact not successful in decreasing the number of arrivals in the period at hand.

First, I will give a historical and social background of the implementation of the Pacific Solution legislation. In the second section of my paper, I shall take a closer look at the acts comprising the policy, and I shall include and explain the main objectives of the Pacific Solution as well. The third section will focus on the criticism of the Pacific Solution, including the issues of to what extent the governments' acts adhered to Australian and international laws, as well as the interpretation of the statistical data related to the number of unlawful non-citizens arriving in the country. In the fourth section, I will talk about later developments – the relaunch of the policy by the Gillard government, the Rudd government's approach and Tony Abbott's policy.

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## **1. Introduction**

At the end of August 2001, Norwegian freighter MV Tampa rescued 433 asylum seekers, primarily Afghans, from a stricken fishing boat, Palapa 1, in the Indian Ocean. The ship was denied permission to enter Australian waters, and when MV Tampa issued a mayday signal and continued its course towards Christmas Island, Australian Special Forces boarded the ship and took it over. The so-called Tampa Affair became a milestone in the history of Australian immigration, as it became the immediate motive for Prime Minister John Howard's government's changing its immigration policies.

During Prime Minister John Howard's eleven-year term between 1996 and 2007, the Australian government's foreign relations policies shifted. While previous governments preferred a friendly approach towards the country's Asian neighbours, PM John Howard returned to what could be considered a traditional attitude, focused on the United States and the United Kingdom. This change is also reflected in the Pacific Solution, which was one of the strictest governmental immigration policies known to the Western cultural hemisphere in the post-millennial era.

The policy, which was first in force between 2001 and 2007 and later re-established under different names by the Gillard and the Rudd Governments, excised thousands of islands from Australia's migration zone, and empowered the government to remove certain asylum seekers from offshore territories to third countries while the arrivals' status was being determined.

## **2. Aims**

The aim of my paper is not only to give an overview of Australia's immigration policy during the aforementioned period, but also to examine and interpret its alleged results in the decrease of unauthorised entries. In this paper, I shall attempt to defend the view that the policy as such was in fact not successful in decreasing the number of arrivals in the period at hand.

The paper is divided into five parts. The first section will examine the historical background of the implementation of the Pacific Solution legislation, as well as the social factors that could have influenced the legislators. In the second part, I shall take a closer look at the acts comprising the policy, and I shall include and explain the main objectives of the Pacific Solution. The third – longest – section will focus on the criticism of the Pacific Solution, including the issues of to what extent the governments' acts adhered to Australian and international laws, the interpretation of the statistical data related to the number of unlawful non-citizens arriving in the country, and the conditions in the processing centres (with stressed importance on the situation of children in this institutions). In the fourth section, I will talk about later developments – the relaunch of the policy by the Gillard government, the Rudd government's new policy against boat arrivals, as well as Tony Abbott's Regional Deterrence Framework. I will then draw conclusions from the previous sections of the paper, and I shall give a brief overview of the current state of affairs as regards immigration policies in Australia.

### **3. Background**

#### **3.1 Historical background to strict immigration policies from the 19<sup>th</sup> century up to the implementation of the Pacific Solution**

##### **3.1.1 From the Gold Rush to the Establishment of the Federation**

While Australia has been a destination of “immigrants” for circa 50,000 years (cf. arrival of aborigines), the modern history of immigration – subsequent to British colonisation – began in the 19<sup>th</sup> century during the Gold Rush era, when European and also numerous Asian immigrants arrived in the country. In the second half of the century, there was an increase in the number of Melanesian and Asian, particularly Chinese immigrants arriving in the country, which was perceived as a threat to the undiversified background of the European settlers. The new arrivals meant economic competition to the white citizens of the continent, in part because some of them knew their profession better than the locals. For example the Chinese brought a more efficient method to wash gold after the discovery of gold in Victoria in 1851.<sup>1</sup> This led to an intense Sinophobia against Chinese migrants, whose numbers came to tens of thousands. (It is worth pointing out that the increasing scale of Asian immigration was not a necessary factor to escalate the situation, as there had been examples of clashes, as early as in the 1840s, e.g. in Long Pocket and Hanging Rock, even though only a few thousand indentured labourers had arrived prior to the Gold Rush (The Australian People, 45).)

Colonial legislators reacted without delay – for example, Victorian Parliament passed the *Act to Make Provisions for Certain Immigrants* in 1854, which limited the number of Chinese passengers who could be brought into the country to one person per every ton of the

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<sup>1</sup> Thompson, Stephen, “Immigration Restriction Act 1901,” *Migration Heritage Centre*, June 2007. <http://www.migrationheritage.nsw.gov.au/exhibition/objectsthroughtime/immigration-restriction-act/>.

ship cargo. Acts similar to the one introduced by the Victorian colony later became the foundation of the 1901 Immigration Restriction Act (also known as the starting point of the White Australia Policy). This act was followed by many other similar restrictive laws against non-European migrants in other states (South Australia 1857, New South Wales 1861, Queensland 1877), and at a conference of Australian colonies in 1888, it was agreed that Chinese immigration should effectively be prohibited.

It might be worth adding that the nationalistic zeitgeist emerged and gained broad appeal all over the world in the 19<sup>th</sup> century, and Australia was not an exception. Its case, however, was special, also because it was not a single country, but separate states on the same continent – if we look for nationalistic sentiments, we must look for what kept the states together: British patriotism and whiteness. These two elements continue to appear in modern day polls on the issue of immigration as well.

Schloenhardt suggests that one of the main reasons for creating the Federation in 1901<sup>2</sup> was, in fact, this desire of the separate colonies on the Australian continent to have a central immigration control agency. This is also evidenced by the fact that it was one of the first acts (following the similar Pacific Island Labourers Act) to be passed by the centralised Parliament of Australia, the supreme legislative body of the newly founded Federation.

In spite of Parliament's wish to introduce an openly discriminatory law against Japanese workers, the Prime Minister, Edmund Barton proposed the idea of the dictation test, which seemed to be more acceptable to the British Government as well.<sup>3</sup> The extremely hypocritical Immigration Restriction Act of Australia, in contrast with the relevant American laws, did not speak of nations or races. Instead, it included a reference to a dictation test, which was perhaps the most controversial of these conditions. It was an easy method with

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<sup>2</sup> Andreas Schloenhardt, *Migrant smuggling: illegal migration and organised crime in Australia and the Asia Pacific region* (Leiden, M. Nijhoff Publishers, 2003), 54.

<sup>3</sup> Geoffrey Lindell and R. L. Bennett, *Parliament: the vision in hindsight* (Annandale, N.S.W., Federation Press, 2003), 49.

which the results could easily be manipulated in a way that it would satisfy the needs of the government, and it was also used in the South African Natal area, where it was adopted to prevent immigration from the Indian sub-continent.<sup>4</sup> The act prohibited entering for “any person who when asked to do so by an officer fails to write out at dictation and sign in the presence of the officer a passage of fifty words in length in a European language directed by the officer”. Japanese authorities protested against the inclusion of the word “European” in the legislation, and therefore, in 1905, the Act was amended in a way that the dictation test could be applied in any prescribed language. As Jupp puts it, while it removes in appearance any trace of discrimination between Asians and Europeans, it actually increased the powers of exclusion.<sup>5</sup> This test was the most important means of the officers to exclude Asian and Pacific immigrants, who, as a High Court decision confirmed<sup>6</sup>, could also decide on the language they used. This early ‘sleight of hand’ ethos would later resurface in the similar ‘work-around’ approach which characterises the legislation of the Pacific Solution acts.

### **3.1.2 From the Second World War to the 1970s**

Although the 1901 Immigration Restriction Act was in force until 1973, when it was abolished by the Whitlam Government, a huge policy shift took place after the Second World War, as politicians started to see the necessity of a more encouraging immigration programme, which allowed a more mixed influx. As suggested by the famous slogan “populate or perish”, coined by Labor Party Minister of Immigration Arthur Calwell, though the “White Australia” policy remained in force during this era as well, its administration

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<sup>4</sup> Freda Hawkins, *Critical years in immigration: Canada and Australia compared* (Kensington, Australia: New South Wales University Press, 1989), 14-15.

<sup>5</sup> James Jupp, *The Australian People: An Encyclopedia of the Nation, Its People and Their Origins* (United Kingdom: Cambridge University Press, 2001), 47.

<sup>6</sup> Helen Irving, „Still Call Australia Home: The Constitution and the Citizen’s Right of Abode,” *Sydney Law Review* 30, no. 1 (2008): 141.

became more lax. The expansion of immigration was necessary not only to meet the country's workforce needs, but also because immigration was seen as a key factor in improving defensive capability after the demonstration of Australia's military vulnerability during the war.<sup>7</sup>

While the government's aim was to attract primarily British and Nordic immigrants, it soon became apparent that this goal was not feasible – mostly due to the fact that the desired source countries were more prosperous than Australia itself. Thus the major source of immigration became the large number of Displaced Persons – a term generally used for people forced to flee from their place of living as a consequence of the Second World War – residing in European DP camps, 170,000 of whom were selected and shipped to Australia. To this day, this has been the largest number of non-British arrivals in a short period of time. This intake basically laid the foundations for a multicultural Australia<sup>8</sup>, even when governmental policies favoured rapid assimilation: all immigrants were required to adopt to the English cultural heritage and to leave their own culture behind in order that a monocultural nation could come into existence.

Throughout the decades following the Second World War, there was a continuous shift from the assimilation policy to one whose aim was to incorporate other cultural groups. One of the milestones of this process was the enactment of the 1958 Migration Act, which also abolished the dictation test, but perhaps the most important step in creating Australia's multicultural society was that in 1964, Minister for Immigration Hubert Opperman was authorised to provide permanent residence permits to people of a mixed racial background if they met one of the general eligibility criteria. Firstly, if the person in question was a refugee or displaced, they could be eligible for a residence permit, that is, the admittance could be

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<sup>7</sup> Catherine Bohm, Moira Coombs, and Michael Klapdor, "Australian citizenship: a chronology of major developments in policy and law", 11 September 2009, [http://www.citizenship.gov.au/\\_pdf/cit\\_chron\\_policy\\_law.pdf](http://www.citizenship.gov.au/_pdf/cit_chron_policy_law.pdf).

<sup>8</sup> James Jupp, *From White Australia to Woomera* (United Kingdom: Cambridge University Press, 2002), 12-13.

based on humanitarian reasons. Secondly, if the applicant had some special expertise, experience or qualification that could be useful to the country, the minister was empowered to grant them permanent residence. Thirdly, if the person of mixed background had the ability to contribute to Australia's economic, social and cultural progress, they could be provided with a residence permit. However, the prerequisite for all the above-mentioned conditions was that the applicant had to show "by appearance, education, upbringing, outlook, mode of dress and way of living, that he is capable of ready integration into the Australian community"<sup>9</sup>.

Eventually, the process resulted in a multicultural society, in which everyone could and can cherish their own culture as long as they adhere to the laws of the country. Perhaps the most significant milestone of this shift was the public policy introduced by the first Whitlam Labor Government, which – by abolishing the White Australia policy – rendered multiculturalism the basis of ethnic affairs policies.<sup>10</sup>

### **3.1.3 From the 1970s to the Pacific Solution**

The phenomenon of asylum seekers appeared in the 1970s, when the first boats carrying people from Vietnam arrived at the shores of Australia. Perhaps somewhat surprisingly in light of the recent past, there was no opposition to this first wave of 'boat people', as they were considered legitimate refugees escaping the communist regime.<sup>11</sup> The sympathetic attitudes of the public were also reinforced by the fact that Australia, supporting the United States, was a belligerent on the anti-communist side. In the 1970s and 1980s, the annual

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<sup>9</sup> Klaus Neumann, "Anxieties in colonial Mauritius and the erosion of the White Australia Policy," *Journal of Imperial and Commonwealth History* 32, no. 3 (2004): 14.

<sup>10</sup> Mark Lopez, "The Politics of the Origins of Multiculturalism: Lobbying and the Power of Influence," (lecture, 10th Biennial Conference of the Australian Population Association from Australian Population Association, Melbourne, November 28, 2000).

<sup>11</sup> Janeth Phillips and Harriet Spinks, "Immigration detention in Australia" (2011), <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F1311498%22>

refugee programmes of the country can be considered fairly generous. In comparison with the refugee cap set at 12,000 places in 2001, in 1981-82, almost 22,000 people were accepted under the refugee and humanitarian programme.<sup>12</sup> It must be noted that the early responses to boat arrivals (e.g. the resettlement of large numbers of Indochinese refugees in the 1970s and 1980s) were generally supported by both significant political parties.<sup>13</sup>

Phillips and Spinks gives a thorough summary of the policies endorsed throughout the 1970s and 1980s in their governmental research paper titled *Boat arrivals in Australia since 1976*, emphasising that most of the policies were in fact supported by both major parties, irrespective of which party established it. Their paper also sheds light on the fact that the involvement of third countries was not alien to previous governments, either:

Governments have focused on engaging other countries and international organisations in an attempt to stop the flow of refugees at the source, or on arranging for refugee processing to occur elsewhere. In 1977–78 approaches were made to regional governments to hold vessels in transit to allow refugee processing in camps. The Government also increased the number of Indochinese refugees accepted for resettlement from camps in Southeast Asia in an effort to reduce the number of people likely to attempt the journey by boat. In 1982 the Fraser Government introduced individual determination of status procedures in order to ensure only 'genuine' Indochinese refugees were admitted to Australia. In 1983, the Hawke Government endorsed the 'durable solutions' to the Indochinese refugee problem proposed by the UNHCR: first, voluntary repatriation; second, social integration in the country of first

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<sup>12</sup> Bem Kazimierz et al., "A Price Too High: the Cost of Australia's Approach to Asylum Seekers," A Just Australia, Oxfam Australia and Oxfam Novib (2007),

[http://www.ajustaustralia.com/informationandresources\\_researchandpapers.php?act=papers&id=83](http://www.ajustaustralia.com/informationandresources_researchandpapers.php?act=papers&id=83)

<sup>13</sup> Janeth Phillips and Harriet Spinks, „Boat Arrivals in Australia since 1976“ (2011),

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2011-2012/BoatArrivals](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals)

asylum; and as only the last resort, resettlement in third countries such as Australia. In 1989 Australia, along with 77 other countries, endorsed the Comprehensive Plan of Action for Indochinese Refugees, which was designed to achieve a durable solution to the continuing outflows of Indochinese in the region. The Plan required first asylum countries in South-East Asia to continue to grant temporary refuge to all asylum seekers and to screen all new arrivals against internationally-recognised criteria to determine whether they were bona fide refugees. Persons deemed not to be refugees were returned to their country of origin; persons in camps throughout the region who arrived prior to cut-off dates for screening were resettled in third countries along with those accepted as refugees; and the orderly departure arrangement was expanded as the safest and preferred means of departure from Vietnam.

The waves subsequent to the first Indochinese arrivals, however, soon rekindled the ever-present fears that one day Asian masses would swarm the continent.<sup>14</sup> As a response to the new influx of asylum seekers, Gerry Hand, who served as Minister for Immigration, Local Government and Ethnic Affairs in Prime Minister Paul Keating's Labor Government, introduced a controversial policy that ordered the mandatory detention of the arrivals until their clearance as refugees. This policy was later enacted as the *Migration Reform Act 1992* with bipartisan support. In an interview conducted in 2005, Gerry Hand summed up the objective of the act, which coincided with the public opinion, thus:

I believe it is crucial that all persons who come to Australia without prior authorisation not be released into community. Their release would undermine the Government's strategy for determining their refugee claims or entry claims. Indeed, I believe it is

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<sup>14</sup> Jupp, *From White Australia*, 188

vital to Australia that this be prevented as far as possible. The Government is determined that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community. (The 7.30 report)

The year 1992 also saw a decrease in target figures for immigration – from 111,000 to 80,000 – and the number of occupations on the priority list was reduced from eleven to four.<sup>15</sup> Stricter policies, however, were not successful, evidenced by the growth in the number of unauthorised arrivals. In contrast to the 80s and the early 90s, when the number of boat people was relatively low, the number of arrivals from the Middle East and Central Asia began to increase in the second part of the decade – primarily due to the UN sanctions on Iraq. While the majority of the refugees headed for Europe, small numbers of runaways, aided by smugglers, left for Australia through Indonesia. They went on board at the southern shores of Indonesia, and sailed towards outer islands such as Christmas Island.<sup>16</sup> The significance of outer territories lies in the fact that while the northernmost large city of Australia, Darwin, lies around 2,700 air kilometres from Jakarta, Christmas Island is a mere 500 kilometres away from the Indonesian capital.

The attitudes of the political parties towards boat people gradually shifted during the years of the Howard Government. While both Prime Minister Howard and his Minister for Foreign Affairs, Philip Ruddock were previously considered liberal from the perspective of immigration, and they were both known as supporters of multiculturalism, the events of August 2001 seemed to have changed their attitudes towards this issue<sup>17</sup>. The topic of immigration came into the limelight during the events of 2001 – some commentators go as far

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<sup>15</sup> Bohm, Coombs and Klapdor, *Australian Citizenship*, 14

<sup>16</sup> Jupp, *From White Australia*, 193

<sup>17</sup> Jupp, *The Australian People*, 56

as stating that it was the Howard Government's tough stance on asylum-seekers and boat arrivals that swept it to victory in the November federal elections."<sup>18</sup>

On 24 August, 2001, a smuggling boat called *Palapa 1* got stranded about 140 kilometres north of Christmas Island. When the Norwegian cargo ship *Tampa* received the distress signals of the stranded ship, it changed course and its crew transferred 433 people on board, though the cargo ship itself had facilities for only 50 people, including its own, 27-strong crew. Although the closest suitable port to the rescue site was on Christmas Island, the Immigration Department of Australia forbade the Norwegian ship to disembark the survivors there. The government sent Australian Special Air Service soldiers to intercept and seize the ship and instruct the captain to sail back to international waters, and by doing so, the incident, which could have been an international humanitarian issue, became an Australian security crisis. The captain, however, refused to follow the instructions, and due to international pressure on the government, the troops were withdrawn. Finally, after days of negotiating, the majority of the passengers were loaded onto a Royal Australian Navy vessel and were taken to camps in Nauru, while the rest were accepted by New Zealand and Ireland.

The political importance of the Tampa Affair was insightfully summarised by political commentator Malcolm McGregor in a contemporary Lateline report on ABC:

The Tampa was undoubtedly a detonator issue, and it was a detonator issue because the prime minister used it intelligently and ruthlessly. The issue of Communism right through the 1950s was an incredibly polarizing and emotive issue in Australian politics. This issue likewise has the ability to drive a wedge into the Labor core constituency and the anecdotal evidence out of the party is that traditional Labor voters in working class electorates are flocking to the Liberals at this election.<sup>19</sup>

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<sup>18</sup> Phillips and Spinks, *Boat Arrivals in Australia since 1976*

<sup>19</sup> Malcolm McGregor, Interview with Malcolm McGregor, *Lateline*, ABC, 2001.

In October the same year, the sinking of an Indonesian boat (later known as SIEV-X) leading to the drowning of 353 people including many children once again drew the attention to people smugglers and illegal immigration. The Senate Committee on a Certain Maritime Incident was set up, and it found that the Royal Australian Navy was fully committed “to the fulfilment of safety of life at sea obligations, and to meeting the humanitarian needs of those on board the intercepted vessels”<sup>20</sup>, thus clearing the government of any wrongdoing in connection with the tragedy.

Besides the Tampa and the SIEV-X affairs, there were other events in this decade which also strengthened the case of those in favour of increasing the severity of immigration policies. The September 11 terrorist attacks on New York and Washington, D.C. were obviously the first of these events, but the 2005 London bombings also contributed to the changing of the political climate, which prompted Parliament to pass more restrictive immigration legislation.

As a result of such events, immigrants were increasingly considered threats to national security, and Australians started to see their country more and more vulnerable. Public hostility towards the growing numbers of boat people combined with the fear of extremist Muslims after the terrorist attacks in the United States pushed the government to act in accordance with the public’s needs. The fear that stemmed in the threat posed by immigrants will be discussed in detail in the next chapter.

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<sup>20</sup> Senate Committee, *Certain Maritime Incident* (2002), [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=maritime\\_incident\\_ctte/report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=maritime_incident_ctte/report/index.htm).

### 3.2 Social background

When discussing the social background of the policy, we must take into consideration that governmental actions, including legislation, are necessarily influenced by public opinion. Therefore, the underlying causes of xenophobia or the fear of illegal immigrants are of great interest to us in this context. It is also important to define what we mean by xenophobia before starting to discuss its causes in the Australian political framework, especially because this term is often used synonymously with racism in everyday parlance. According to its dictionary definition<sup>21</sup>, racism is the belief in the existence of distinct races that are different in their characteristics and abilities and that these races are in an inferiority-superiority hierarchy. On the other hand, xenophobia is simply a fear of people from other countries because they are different and have a different cultural heritage.

Jupp, in his 2006 article entitled “Terrorism, Immigration and Multiculturalism” argues that albeit the changes in the demographics of the population since the 1947 census (90% British, 99% White and overwhelmingly Christian) had been dramatic, the Muslim population of the country (1.5%) was at the time lower than that of France (7.5%), Germany (3.7%) and other countries of the same or similar cultural background. Australia was still less multicultural in religious and racial terms than many comparable others. Therefore, he suggests, fears of masses of culturally different immigrants are unjustified.

Jupp’s reasoning is not wholly satisfactory. While the figures he used do suggest that Australia is not yet on the same level in terms of diversity of religions and multiculturalism as the other countries mentioned in his paper, some trends in the 1996, 2001 and 2006 censuses are also noteworthy from this point of view. When speaking of cultural differences, which are generally the primary reasons underlying objections to immigration, the arrivals’ religious and

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<sup>21</sup> cf. Merriam-Webster (<http://www.merriam-webster.com/dictionary/racism>) and Oxford Dictionaries (<http://oxforddictionaries.com/definition/english/racism?q=racism>)

linguistic background must be considered, because these are more accurate indicators of culture than the country of origin or ancestry. Encountering an increasing number of people from a different culture who dress, behave and speak differently from the natives can increase the fear of other cultures. Australian censuses include questions related to the respondents' religion and the language used at home, which can help us address these issues.

In the ten years between 1996 and 2006, there was a dramatic increase in the number of non-Christians in Australia. According to government-published census data from this period, the total number of Christians suffered a 0.6 per cent decrease (12,764,341 to 12,685,861) between 2001 and 2006 after a 1.45 increase between 1996 and 2001, while the number of Buddhists grew first by 79 per cent (+158,001) in this period and by 17 per cent (+60,945) between 2001 and 2006; the number of Hindus increased by 41.9 per cent (+69,279) and by 55 per cent (+52,374); and the number of Muslims grew by 40.1 per cent (+80,693) between 1996 and 2001, and by 20.9 per cent (+58,823) in the following period. In addition, Islamic leaders such as the chairman of the Islamic College of Brisbane, Mohammed Yusef emphasised that even these figures fail to reflect reality, as many Muslims do not disclose their religion in official surveys because they fear persecution.<sup>22</sup> The census data on languages used at home tell a similar story: the number of the people speaking Hindi at home increased dramatically (1996: 33,989 > 2001: 47,817 > 2006: 70,008), along with Arabic (177,606 > 209,372 > 243,662). These societal trends are accompanied by changes to the average Australian's experience of everyday life. Obviously, anything that affects the outlook of the voting public also has an impact on governmental policies.

Public opinion poll data show that, starting from the 1970s, Australians had gradually turned against boat people. Katherine Betts, Professor of Sociology at the Swinburne University wrote an analysis, which, supporting the aforementioned trends and consequences,

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<sup>22</sup> Mohammed Yusef qtd. in Annie Guest, "Guarded Muslims 'halve census figures'", *ABC News*, 18 July 2011. <http://www.abc.net.au/news/2011-07-18/muslim-population-census-fears/2798462>.

shows that while in the 1970s around 70 per cent of Australians agreed that at least a limited number of refugees arriving by boat should be allowed to stay in the country, another public opinion poll in 1993 showed that 44 per cent of people would have sent them right back without assessing their claims, and 46 per cent would have approved of holding them in processing centres during the determination of their refugee claims. Another poll conducted after the Tampa affair in 2001 showed that 71 per cent of Australians approved of the detention of illegal immigrants while their claims were being assessed.<sup>23</sup>

While the government's tightening policies can partly be explained by the desire to build political capital based on the public opinion, Peter Browne, senior research fellow at the Swinburne Institute for Social Research, argues in a 2001 study that after studying numerous 2010 pre-election polls he found that "What the polls over the past two months have shown very clearly is that when people say they favour tougher asylum seeker policies [...] that attitude doesn't appear to be translating into how they will vote [...] the figures suggest the electoral impact of the issue will be mild or non-existent"<sup>24</sup>.

#### **4. Acts Comprising the Pacific Solution**

In the heated pre-election campaign of 2001, the Tampa affair soon became an important issue. John Howard even stated during the campaign that "we will decide who comes to this country and under what circumstances"<sup>25</sup>. The Pacific Solution in fact was a direct answer to the August events, as the first bill concerning the issues of asylum seekers and later enacted as the *Border Protection (Validation and Enforcement Powers) Act 2001* (further referred to as BPA) was passed on 27 September in 2001.

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<sup>23</sup> Katherine Betts, "Boat people and public opinion in Australia," *People and Place* 9, no. 4 (2001): 44.

<sup>24</sup> Peter Browne, "Boats and votes: more evidence on the opinion gap," *Inside Story*, 16 July 2010.

<http://inside.org.au/boats-and-votes-more-evidence-on-the-opinion-gap/>.

<sup>25</sup> John Howard, "Election Policy Speech," 28 October 2001.

The most important aim of the BPA was, as a Bill Digest on the website of the Parliament of Australia states, to “put beyond doubt the domestic legal basis for actions taken in relation to foreign ships within the territorial sea of Australia”<sup>26</sup>, but this is just a euphemistic phrase for retrospectively legitimising the procedures of Australian authorities (the occupation of the Norwegian ship by the Special Forces as well as the forced transfer of the asylum seekers to third countries) during the Tampa Crisis. The BPA did not only introduce provisions regarding the detention of persons found on vessels and aircraft, but also stated that the officers detaining these people “may take the person, or cause the person to be taken, to a place outside Australia.” (Schedule 1, 3Ab). The BPA also rendered it possible for Australian authorities to “direct the master [...] of a ship [suspected of carrying unlawful immigrants...] to take the ship, and any person on board the ship, outside the territorial sea.” (4.1).

The migration act in force (*Migration Act 1958*) in 2001 defined the migration zone as the “area consisting of the States, the Territories, Australian resource installations and Australian sea installations” (Section 5). To exclude some offshore locations, Parliament enacted the *Migration Amendment (Excision from Migration Zone) Act 2001* (further referred to as MAA1), which was to amend the *Migration Act 1958* by excising several territories from the migration zone, including the Territory of Christmas Island and other sea or resource installations (Schedule 1, 1 Subsection 5(1)) – places which the majority of asylum seekers reached first. The MAA1 also introduced the term “offshore entry person”, who was an unlawful non-citizen entering Australia at an excised place (Schedule 1, 5 Subsection 5(1)). In accordance with the act, offshore entry persons were barred from applying for a visa, and the only person to have the right to lift the bar was the Minister for Immigration. By the

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<sup>26</sup> Parliament of Australia, *Bills Digest No. 62 2001-02 Border Protection (Validation and Enforcement Powers) Bill 2001*. [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd0102/02bd062](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd0102/02bd062)

introduction of the MAA1, the government forced offshore entry persons to leave the country, as they could apply for a visa only from outside of Australia.

Another act assented to in the September of 2001 was the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* (further referred to as MAA2). The MAA2 reinforced mandatory detention by providing the possibility of indefinite detention of asylum seekers for the authorities and clarified the circumstances under which an officer may detain an offshore entry person (Schedule 1, At the end of section 189). The act also introduced the term “declared country” (Schedule 1, 6, 198A), i.e. a country where the detainees may be taken for processing.

After Australia’s signing an Administrative Agreement with the tiny island country Nauru in September 2001 and a similar agreement with Papua New Guinea in October to accommodate asylum seekers for the duration of their processing, these two countries became Australia’s major partners in resolving her issues with unlawful non-citizens<sup>27</sup>. The construction of the Offshore Processing Centres in these countries, as well as the provision of the asylum seekers were at Australian expense. In these centres, officers of the Immigration Department and the UNHCR (United Nations High Commissioner for Refugees) processed the asylum seekers<sup>28</sup>. The persons considered genuine refugees were eventually resettled in Australia or a third country, and as Phillips and Spinks emphasise, Australian authorities were “trying to find resettlement solutions in a third country in preference to Australia”<sup>29</sup>.

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<sup>27</sup> Phillips and Spinks, *Boat arrivals*, 14

<sup>28</sup> Jupp, *From White Australia*, 195

<sup>29</sup> Phillips and Spinks, *Boat arrivals*, 14

## 5. Criticism

### 5.1 Financial effects

Opponents of the Pacific Solution have been criticising it for numerous reasons. Some consider it a ‘blunder’ because of the high expenses it inflicted on the Australian government (almost \$300 million in less than a year), while others argued that the Pacific Solution depended on promises to Papua New Guinea and Nauru, which, according to Jupp, “could only be met either by finding other states to ‘share the burden’ or by Australia taking several hundred whom it could have taken in the first place under the existing system”<sup>30</sup>. A few months before the end of the Pacific Solution, a study was published by Oxfam Australia (the local branch of an international human rights organisation), which stated that the government had spent at least one billion dollars on offshore processing since the enactment in 2001. Bem and his co-authors compared this to the estimates of the Department of Immigration and Citizenship, which suggested that to process 1,700 asylum seekers for 90 days each at an onshore processing centre would have cost around 35 million<sup>31</sup>. We also know, however, that the 90-day processing time was a mere target number set by the government, and in almost 40 per cent of the cases it was not met (e.g. in the 2010-11 program year, the average 90-day processing rate was 60.7 per cent<sup>32</sup>. However, even if we take this into consideration and calculate with an average processing time of one year, processing the 1,700 asylum seekers previously processed offshore would have cost only 140 million.

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<sup>30</sup> James Jupp, *From White Australia*, 195

<sup>31</sup> Bem Kazimierz et al., *A Price Too High: the Cost of Australia’s Approach to Asylum Seekers*

<sup>32</sup> Australia, Department of Immigration and Citizenship, “Fact Sheet 61 - Seeking Protection Within Australia,” 2012. <http://www.immi.gov.au/media/fact-sheets/61protection.htm>.

## 5.2 Legal background to governmental actions and adherence to international law

### 5.2.1 Legal background to governmental actions

Although the adherence of the Pacific Solution Acts could be contested only on a constitutional basis, some civil rights organisations questioned if the government's acts during the Tampa crisis, namely prohibiting the asylum seekers on MV Tampa from entering Australia, were in accordance with the Migration Act 1958. In the case named *Ruddock & Ors v Vadarlis & Ors*<sup>33</sup>, the primary question to be addressed by Federal Court of Australia was the scope of the prerogative power of the executive branch of the Australian government.

Prerogative power is a legal doctrine originating from English common law, which defines powers that exclusively belong to the Crown. These powers (for example declaring war on another country) could originally be practised by the sovereign in a supra-legal manner, but – most importantly in our case – they could also be superseded by statute. In Australia, it is generally accepted that Section 61 of the Constitution (“The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.”<sup>34</sup>) includes the prerogative powers of the Crown, that is, prerogative powers are exercised by the Governor-General and the Government.<sup>35</sup>

The case started as representatives of the Victorian Council for Civil Liberties (now known as Liberty Victoria) initiated a court proceeding during the Tampa Crisis. Their primary aims were to get a writ of habeas corpus (court order) to bring the detained refugees

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<sup>33</sup> Federal Court of Australia, *Ruddock v Vadarlis*, 2001.

[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2001/1329.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2001/1329.html)

<sup>34</sup> Australia. *Commonwealth of Australia Constitution Act*.

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/coaca430/s61.html](http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/s61.html)

<sup>35</sup> Max Spry, “The Executive Power of the commonwealth: its scope and limits,” 19 July 2004.

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/RP9596/96rp28](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9596/96rp28)

to Australia and to prove that the Government (holding the executive powers) had no (prerogative) power to detain non-citizens for the purpose of expulsion. They argued that as the 1958 Migration Act contained detailed provisions on the conditions of detaining non-citizens, and statutory provisions “overwrite” prerogative powers, the Government had no right to claim prerogative powers on the issue.<sup>36</sup>

In the Federal Court, Justice North delivered his decision favouring the claimant on 11 September 2011. He determined that the Government did not hold prerogative powers to expulse non-citizens from Australian waters – even if it had had such a power, the statutes of the 1958 Migration Act would have replaced it, as it regulated all the executive powers on dealing with non-citizens – and that asylum seekers were detained and expelled without lawful authority, meaning they had to be released.<sup>37</sup>

The Government immediately appealed against the decision, and the Full Federal Court (Bryan Beaumont, Michael Black, and Robert French) overturned the original decision, though with a minority dissent. Justices French and Bryan Beaumont found that the Government had had the necessary prerogative power in the case, as the power to decide on who can enter Australia is a main sovereign power, of which no legislation can deprive the Government. They also argued that the Migration Act did not contain express words that would invalidate this power.<sup>38</sup> On the other hand, Justice Black argued that prerogative power was no longer considered in use, and even so, he found that “the undoubted power of the Executive to protect Australia’s borders against the entry of unlawful non-citizens in times of peace derives only from statute”<sup>39</sup>, meaning that examining if the Government had

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<sup>36</sup> Sharon Pickering, *Refugees and State Crime* (Federation Press, 2005), 153.

<sup>37</sup> Nathan Hancock, “Refugee Law - Recent Legislative Developments,” 18 September 2011.

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/CIB/cib0102/02CIB05](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib0102/02CIB05)

<sup>38</sup> Federal Court of Australia, *Ruddock v Vadarlis*

<sup>39</sup> *ibid.*

prerogative power at all would not influence the results of the case as the 1958 Migration Act was exclusive in regard to the entry or expulsion of non-citizens.

While the Full Federal Court delivered its decision on 18 September, eight days later the Border Protection Act – discussed above – was passed, which also gave retrospective statutory ground for governmental actions during the Tampa Crisis. By passing the bill, the Parliament managed to rule out the chance of any appeal to the High Court, as both Justice North's decision and Justice Black's dissent were based on the lack of statutory power of the government.

### **5.2.2 Adherence to international law**

Other critics, including Amnesty International, have argued that the new immigration policy was not in fact compliant with international law. Australia has ratified numerous international treaties, conventions binding in international law, designed to protect the rights of asylum seekers, and it is a party to the 1951 Convention and Protocol Relating to the Status of Refugees (CPRSR, in what follows Refugee Convention), as well as the 1967 International Covenant on Civil and Political Rights (ICCPR), the 1989 Convention on the Rights of the Child (CRC), and the 1984 Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (OPCAT). International law consists of rules which primarily govern the relations and dealings of states with each other. International conventions are sets of customary principles of behaviour which states voluntarily agree to, which also means that there is generally no higher policing force which could punish the countries which breach their international legal obligations. Naturally, the international community may decide to respond to violations through sanctions or military intervention.<sup>40</sup>

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<sup>40</sup> Peter D. Fox, "International Asylum and Boat People: The Tampa Affair and Australia's "Pacific Solution", " *Maryland Journal of International Law* 25, no. 1 (2013): 359.

Critics like Mansted claim that the three primary legal obligations under the above-mentioned treaties which the Pacific Solution calls into question are the following: prohibition of refoulement (the return of an alleged refugee to his state of origin), discrimination due to illegal entry and arbitrary detention.<sup>41</sup>

### **5.2.2.1 Prohibition of refoulement**

While no international treaty obligates states to accept every refugee arriving in their territory, in accordance with the Refugee Convention, “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>42</sup>

As Fox states in his essay on the issue, the Refugee Convention in its general provisions grants certain rights to persons that meet the definition of a refugee. Chapter 2 for example grants “Juridical Status” rights – it includes the Article 16 right to “free access to the courts of law on the territory of all Contracting States.”<sup>43</sup> Also, administrative measures guaranteed in Chapter 5 include the Article 26 right to freedom of movement once a refugee is lawfully within a Contracting State’s territory.<sup>44</sup> Fox argues that “Australia made certain that Article 26 could not be invoked when it prevented the Tampa from landing the rescued asylum seekers on its territory and concurrently denied them the Article 16 right to access Australian courts.”<sup>45</sup>

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<sup>41</sup> Rachel Mansted, “The Pacific Solution – Assessing Australia’s Compliance with International Law,” *Bond University Student Law Review* 3, no. 1 (2007): 3

<sup>42</sup> UN General Assembly. Convention and Protocol Relating to the Status of Refugees. Article 33. 1951.

<sup>43</sup> *ibid.* Article 16.

<sup>44</sup> *ibid.* Article 26.

<sup>45</sup> Peter D. Fox, *International Asylum*

Although there is one exception to the prohibition of refoulement – a state may force back a refugee if there are reasonable grounds that he or she poses a danger to the state’s security after individual assessment – asylum seekers subject to the Pacific Solution are not individually assessed before their removal from the country.<sup>46</sup> Two other conditions must also be mentioned here: despite the fact that Australia excised certain territories from her “migration zone”, the prohibition of refoulement applies to these territories as well – to avoid the prohibition, Australia would have to renounce them; and it is important to note that refoulement is not restricted to the countries the given refugee originally sought asylum from.

As the majority of asylum seekers were transported to Nauru and Papua New Guinea, it must be examined if there is a risk of persecution in these countries. The issue here is whether sending asylum seekers to Papua New Guinea and Nauru amounts to refoulement.<sup>47</sup> It must be mentioned that there are numerous articles arguing that the conditions in overseas refugee camps are so appalling that it can be seen as a threat to the life of their inhabitants (cf. 5.3 Condition of processing centres). While critics of the policy argue that the conditions of the processing facilities are not satisfactory thus pose a threat to the asylum seekers (e.g. Australian Human Rights Commission, *Inquiry into Australia’s agreement with Malaysia in relation to asylum seekers*, 20), Nauru and Papua New Guinea are generally considered safe for future refugees.<sup>48</sup> As the removal of refugees to a third country where their lives are not threatened does not constitute refoulement, the Pacific Solution in this respect does not violate international laws.

In addition, the receiving states (in this case, Papua New Guinea and Nauru) must be also safe in the sense that asylum seekers are not at risk of subsequent refoulement. As Mansted states, Australia would violate Article 33 of the Refugee Convention, if there were a

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<sup>46</sup> Mansted, *The Pacific Solution*, 4

<sup>47</sup> *ibid.*, 4

<sup>48</sup> Mansted, *The Pacific Solution*, 5

reasonable risk that refugees could be refouled from the two receiving countries.<sup>49</sup> To avoid this, Australia included a passage concerning the prohibition of refoulement in its memoranda of understanding with Nauru and Papua New Guinea. This, however is not a legally binding document, which means that the two receiving countries could in fact refouler the asylum seekers sent by Australia without being punished for it. As Nauru and Papua New Guinea are seemingly less committed to the principles of the Refugee Convention, there could be a greater risk that refugees would be refouled – however, no such removals have been executed so far under the Pacific Solution, and so reality shows that these states are not more likely to refouler refugees than Australia itself.<sup>50</sup>

#### **5.2.2.2 Prohibition of discrimination of illegal immigrants**

The prohibition of imposing penalty for illegal entry is also one of the elements of the Convention Relating to the Status of Refugees (189 UNTS 150, article 31), which is arguably violated by the Pacific Solution. Temporary Protection Visas issued for unauthorised asylum seekers since their introduction in 1999 had a validity of three years, after which the person's need for protection was reassessed.<sup>51</sup> Arguably, this special visa can be considered as limited access to the Australian visa system, but according to Mansted, it will not breach international law if objectively justifiable on administrative grounds.<sup>52</sup>

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<sup>49</sup> *ibid.*, 5

<sup>50</sup> *ibid.*, 5

<sup>51</sup> Phillips and Spinks, *Boat arrivals*, 15

<sup>52</sup> Mansted, *The Pacific Solution*, 7

### 5.2.2.3 Prohibition of arbitrary detention

Mandatory detention, which has been a governmental policy since the 1994 enactment of the *Migration Reform Act 1992*, is also a neuralgic point when criticising the Pacific Solution for its not adhering to international law. Certain international lawyers, such as Penelope Mathew<sup>53</sup>, claim that as international refugee laws clearly prohibit the detention of asylum seekers during the determination of their refugee status, Australian policies indubitably violate these laws, as they allow detention under specific circumstances (for example a high risk of absconding). The senate, however, maintains and has legislated that asylum seekers in offshore processing centres are not in immigration detention, for they are free to return to their home countries<sup>54</sup>.

While the Pacific Solution as such can certainly be criticised from a moral point of view, from the above-mentioned it follows that whether Australia adheres to international law or not is rather unclear. As Mansted concludes, “while Australia’s implementation of the Pacific Solution has deserved much of the criticism levelled at its international legality, only certain aspects of the scheme can conclusively be categorised as violations of Australia’s international legal obligations”<sup>55</sup>.

### 5.3. Health Care Services in the Processing Centres

The Department of Immigration also argued that the International Organization for Migration, which is responsible for managing the centres on Nauru, maintained a high standard of medical care for refugees, stating that while in the general population of Australia, the ratio of

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<sup>53</sup> Penelope Mathew, “Australian Refugee Protection in the Wake of the Tampa,” *American Journal of International Law* 96, no. 3 (2002): 665

<sup>54</sup> Senate Legal and Constitutional References Committee, qtd. in Mansted, *The Pacific Solution*, 8

<sup>55</sup> Mansted, *The Pacific Solution*, 11

doctors to citizens was 1:800, in the Nauru camps it was 1:230.<sup>56</sup> Other observers, however, like Oxfam, claim that the adequate hospital infrastructure is lacking in the camps, without which doctors present could not deliver the necessary services to the refugees. In an interview with staff of the Asylum Seeker Resource Centre, for example, a member of the medical staff stated that a woman suffering from a fractured pelvis had not been diagnosed for many months, because the x-ray machine in the camp was not operating. While the government also argued that in such cases, refugees with serious illnesses could be transported to Australia for treatment, this entails a significant financial burden on the state.<sup>57</sup> In fact, the Department of Immigration and Citizenship acknowledged that “the total costs [of a medical evacuation] could range between \$20,000 for non-charter flights and \$100,000 depending on arrangements.”<sup>58</sup>

The 2003 Nauru hunger strikes aimed at drawing the public’s attention to the conditions of the camps. They also highlighted that the medical background of the little island country was not sufficient to provide health care to all the refugees forced to live there (Nauru’s healthcare system was designed for a population of 10,000 people). In 2003, 45 asylum seekers participated in the hunger strike, while Nauru’s sole hospital had a capacity of four beds for emergency cases, and a usual bed occupancy between 5 – 25. Although it had surgical and medical facilities, it lacked a blood bank. In spite of this, at the peak of the hunger strike the hospital had 118 admissions as patients were admitted for treatment.<sup>59</sup>

An inquiry by the Alliance of Professionals Concerned about the Health of Asylum Seekers and their Children (in what follows Alliance of Professionals) states that in the long term, it would be more cost-efficient to place asylum seekers in the community and providing

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<sup>56</sup> Bem Kazimierz et al., *A Price Too High*

<sup>57</sup> Bem Kazimierz et al., *A Price Too High*

<sup>58</sup> *ibid.*

<sup>59</sup> *ibid.*

them with welfare benefit than keeping them in detention centres.<sup>60</sup> Using governmental data, they calculated that the cost of a refugee would be approximately \$117 per day, which – calculating with around 3500 people – would have a total cost of \$150 million a year. The alternative solution would be to have refugees living in the community, which – including a living allowance (\$36 per day) plus the administrative costs (\$27 per day) – would be a total of \$63 a day. This would mean that by providing welfare benefits instead of placing asylum seekers in detention centres could save as much as \$70 million per year.

#### **5.4 Conditions in the Processing Centres**

Human rights organisations fiercely criticised the Pacific Solution for the inhumane physical conditions at the camps. A report titled “Repeating Despair on Nauru” by Caroline Fleay, lecturer at the Centre for Human Rights Education at Curtin University, Sydney, includes a detailed description of the processing centre in Nauru. According to the report, metal containers holding fifteen people were erected and enclosed with high wire fences, and in the first six months, electricity was only provided to communal areas, meaning that sleeping areas could not be cooled or lit, though considering the tropical climate of the island, its weather was often hot and humid with many mosquitoes. Fresh food was also in short supply due to the remoteness of the island, and it was also reported that the food was stale and insects were found in it.

Instead of continuing with the lengthy description, we shall have a closer look at yet another description – that of the ill-famed Woomera Immigration Reception and Processing Centre located near the village of Woomera in South Australia, where the 2002 hunger

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<sup>60</sup> Alliance of Professionals Concerned about the Health of Asylum Seekers and their Children, *Submission to Human Rights and Equal Opportunity Commission Inquiry into Children in Immigration Detention*, 2002: 37. [https://www.humanrights.gov.au/sites/default/files/content/human\\_rights/children\\_detention/submissions/109.doc](https://www.humanrights.gov.au/sites/default/files/content/human_rights/children_detention/submissions/109.doc)

strikes, lip-sewings and riots occurred. In a 2002 Committee forum, Jacquie Everitt, a lawyer having worked on behalf of detainees, gave a talk on the conditions she had seen in Woomera. Similarly to the report on Nauru, she spoke about 15 metre razor wires, tin dongas, insufficient and even inedible food (Inside Woomera).

Therefore it seems that the problems described in reports on Nauru and similar offshore processing centres are in fact universal and occur in other – even onshore – centres with the same purpose, meaning that this argument cannot be used solely against such centres in third countries.

### **5.5 Psychological effects of long-term detention**

While some organisations criticised the Pacific Solution for the physical conditions of the camps being inadequate (cf. 5.3), numerous acknowledged psychiatrists expressed criticism for the psychological effects of long-term detention. Already back in 2002, Human Rights Commissioner Dr Sev Ozdowski gave the following report at an International Mental Health Conference:

As Human Rights Commissioner, I have the responsibility to inspect and report on conditions in immigration detention centres. These visits have raised considerable concerns for me because I could see the visible changes in individuals I had met previously. I could also gauge the changes in mood in general as various factors caused many adults and their children to remain in remote centres for well over a year, remote from community contacts and cultural/religious support, and increasingly devoid of hope.”<sup>61</sup>

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<sup>61</sup> Sev Ozdowski. "Long-term detention and mental health" (speech, Developing Leadership for Mental Health from Dr Sev Ozdowski, Carlton, October 18, 2002).

In yet another interview, psychiatrist Pat McGorry described detention centres as “factories for mental illness and mental disorder”<sup>62</sup>.

As Simon Tatz, director of communications for the Mental Health Council of Australia and Kim Ryan, CEO of the College of Mental Health state in their article titled *Detention Centres are Factories for Mental Illness*, detained asylum seekers are more exposed to depression, anxiety and post-traumatic stress disorder. They argue that “there is evidence regarding the length of detention and prior exposure to interpersonal trauma on rates of depression”. Their organisations, together with several other colleges, institutes and associations, have united to demand an independent investigation into the standards of mental health care in detention centres, though emphasised that they did “not challenge the Government’s policy of mandatory detention, as that is a separate and extremely complicated debate”. A parliamentary committee was later called up, which in its final report concluded the same negative effects of long-term detention, and Christopher Bowen, Minister of Immigration and Citizenship promised to the public that they would do everything to move people living in detention centres into the community as quickly as possible<sup>63</sup>.

The high prevalence of psychological disorder among people in detention facilities in mainland Australia have been widely documented. Unfortunately, studies conducted on the impact of detention in offshore locations are not as easy to find, primarily because of the fact that researchers have no or little access to third-country detention centres. Oxfam Australia conducted a number of interviews concerning this issue, which showed that “mental health

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<sup>62</sup> Pat McGorry qtd. in Adam Creswell, "Call to abandon 'factories for mental illness'," *Australian*, 26 Jan 2010, <http://www.theaustralian.com.au/news/nation/call-to-abandon-factories-for-mental-illness/story-e6frg6nf-1225823428382>.

<sup>63</sup> Christopher Bowen, "Joint Select Committee Report on Australia's Immigration Detention Network, community detention, bridging visas," ABC Lateline. Australian Broadcasting Corporation: 30 March 2012. Television.

issues are at least equally as prevalent among offshore asylum seekers as they are among onshore asylum seekers.”<sup>64</sup>

As underage refugees without the necessary documentation were also transferred into detention centres, the psychological welfare of children has constantly been making room for uneasiness in professional circles as well. In 2002, a group of legal and medical professionals, the Alliance of Professionals submitted an inquiry into children in immigration detention to the Human Rights and Equal Opportunity Commission of Australia. In this inquiry, they draw attention to several serious issues concerning the mental welfare of children. The inquiry states that the “the first years of life are absolutely vital to the development of children, particularly in relation to their linguistic, cognitive, emotional and social skills”<sup>65</sup>, thus the psychological and emotional effects they suffer in detention centres is longer-term in children. According to the inquiry, children in detention centres “are exposed to multiple stressors including behavioural and psychological distress in adults, dislocation from protective social groups and structures, witnessing violence and self-harm, and separation from attachment figures”<sup>66</sup>. The document concludes that the longer a child spends institutionalised, the greater and longer-term the impact on them can be, and the less likely it is that they can recover from the trauma: “The fact that children are likely to be kept in detention for long periods of time if their parents’ application for refugee status is rejected at any of the primary stages, and an appeal is lodged, adds to their major health risks”<sup>67</sup>.

The breaking down of families can also be a major concern. In a recent publication of The International Detention Coalition, a global network of civil society organisations that deal with issues of refugees, the organisation claims that the longer a family have to spend in

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<sup>64</sup> Kazimierz Bem et al., *A Price Too High*

<sup>65</sup> Alliance of Professionals, *Submission*, 5.

<sup>66</sup> *ibid.*, 6.

<sup>67</sup> *ibid.*, 6.

detention, the more likely it is to break up.<sup>68</sup> Parents in such disempowered situations do not have the necessary power to act as figures of authority, they cannot provide for their families and they are not able to care for their children as they are supposed to, that is, they are unable to perform as fully functional parents. As a result, children are sometimes expected to take over adult roles, which puts increased burden on their shoulders, since they have to deal with authorities and support their parents, which overturns the ordinary dynamics of the family.<sup>69</sup>

We can see, however, that just as in the case of the physical conditions at the processing centres, the major problem that experts highlighted was not that these facilities were located in third countries, but rather the conditions and the length of detention that caused the detainees' mental problems. Many of the asylum seekers have already gone through traumatic life events back in their home countries and, according to medical studies, their mental health can be worsened by the fact that they are placed under mandatory and indefinite detention.<sup>70</sup>

## 5.6 Conclusion of criticisms

For years, the Pacific Solution was primarily criticised for the above-mentioned flaws – being too expensive, not adhering to international law, not taking the human rights of the asylum seekers into consideration, and not having adequate facilities for refugees in the camps. More recently, however, its actual results have been questioned as well. Over the years that the Pacific Solution acts have been in force, the number of arrivals decreased significantly (see Figures 1 and 2). This, according to the official position, proves the success of the Pacific Solution – it seems to many that illegal immigration into Australia has been arrested. This was

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<sup>68</sup> International Detention Coalition, *Captured Childhood*, 49.

<sup>69</sup> *ibid.*, 50.

<sup>70</sup> Derrick Silove, McIntosh Philippa, and Rise Becker, "Risk of retraumatisation of asylum-seekers in Australia," *Australian and New Zealand Journal of Psychiatry* 27 (1993): 609.

also highlighted in an address to the Lowy Institute for International Policy by Tony Abbott, current leader of the opposition: “Between 1999 and 2002, the Howard government successfully reduced a flood of unauthorised boat arrivals to a mere trickle. Between 2002 and 2007, less than 20 boats arrived with fewer than 300 passengers”.

### **5.7 Interpretation of the data**

The intended goals of the Pacific Solution thus seem to have been achieved. However, when analysing these statistics, we should take into consideration one of the most important theories in migration, the ‘push’ and ‘pull’ theory. According to the theory, push factors generally refer to the events (wars, catastrophes, similar occurrences) and circumstances (low wages, general poverty, etc.) of the country of origin that could in fact motivate the immigrant to leave the country, but also include difficulties that the person would have to face in the receiving country. On the other hand, pull factors are usually aspects of the receiving countries that are in some ways better than those of the country of origin (e.g. political or religious freedom, attractive climate, better living conditions, etc.).

The obstacles the Pacific Solution put in immigrants’ way are obviously considered push factors, but their power is yet to be assessed. The best way to test their efficiency is to find one or more similar countries, and compare their immigration figures in the same period that the Pacific Solution was in effect. In the case of Australia, the most self-evident such country would be New Zealand, as the two countries experience the same regional dynamics and are relatively desirable locations for asylum seekers. The most important aspect in choosing the “control country”, however, is that the policies of the countries have been rather divergent in the last few decades.

Figure 3 shows the asylum applications submitted at the first instance in Australia and New Zealand between 1994 and 2008. The similarity of trends is apparent, but it is even clearer in Figure 4, which shows year-on-year change in the number of submitted asylum applications in the two countries (due to the fact that the same date were used as in Figure 3, the starting year in this case is 1995). The initial success of the Pacific Solution becomes even more questionable when we notice the same drop in the numbers in the affected years. When comparing Figures 5 and 6, each containing the averages of the statistics of Australia and New Zealand and five other developed countries respectively, we can see the same tendencies.<sup>71</sup>

## **6. The Continuation of the Pacific Solution after the Howard Government**

The Pacific Solution played an important role during the 2007 election campaign as well. Labor Party candidate Kevin Rudd repeatedly stated that if he were elected, asylum seekers processed offshore would be transported to Christmas Island and the Pacific Solution would be ceased (The 7.30 report, 21/11/2007). Upon the Labor Party's winning the election, the policy was in fact abandoned in 2008, which was applauded by international human rights organisations.

After Kevin Rudd's forced resignation in 2010, the new Labor Prime Minister, Julia Gillard announced that the issue of unauthorised arrivals was one of the most urgent problems to be dealt with by her future government, although she had previously stated that the "so-called Pacific Solution [...] is costly, unsustainable and wrong as a matter of principle"<sup>72</sup>, when the Howard government was in favour of stricter immigration policies.

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<sup>71</sup> The data of the figures are from the website of the United Nations Human Rights Council (<http://www.unhcr.org/42b0195c2.html> and <http://www.unhcr.org/49c796572.html>).

<sup>72</sup> Julia Gillard, qtd. in Phil Mercer, *Is Australia asylum U-turn a 'better option'?*, BBC News, 15 August 2012. <http://www.bbc.co.uk/news/world-asia-19267489>.

The first acts of the Gillard Government to revive the offshore refugee camps was to arrange the transfer of 800 asylum seekers to Malaysia. This plan – known as the Malaysia Solution – however, fell through, as the Australian High Court invalidated the decision of the government that declared Malaysia a country where asylum seekers could be processed. The decision referenced the assessment of the Department of Foreign Affairs and Trade stating “Malaysia is not a party to the Refugee Convention and does not itself grant refugee status or asylum or have in place legal protections for persons seeking asylum.”<sup>73</sup>

When the first bill which would have reintroduced offshore processing centres was not passed by Parliament on 27 June 2012, the following day Prime Minister Julia Gillard, together with Minister of Immigration and Citizenship Christopher Bowen announced at a press conference that a panel of experts led by Air Chief Marshal Angus Houston was to be set up to produce a report on “the best way forward for our nation in dealing with asylum seeker issues”<sup>74</sup>. In her statement, she also suggested that acts leading to the establishment of third country detention centres would serve the benefit of illegal immigrants, as they would be deterred “from making very risky journeys at sea, and paying a people smuggler the price of that risky journey”<sup>75</sup>.

The report of the Expert Panel on Asylum Seekers released on 13 August contained a range of recommendations on short, medium and long term solutions of the issue, one of the short term measures being the reestablishment of processing centres in third countries in order to provide a “circuit breaker to the current surge in irregular migration to Australia [and] to diminish the prospect of further loss of life at sea”<sup>76</sup>. The panel also recommended that

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<sup>73</sup> High Court of Australia, Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship, 2011. <http://www.austlii.edu.au/au/cases/cth/HCA/2011/32.html>

<sup>74</sup> Julia Gillard, "Subjects: Asylum seeker legislation; Expert advisory panel," Press conference.

<sup>75</sup> Ibid.

<sup>76</sup> Janet Phillips, *'Pacific Solution' revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island*, 2012.

[http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1893669/upload\\_binary/1893669.pdf;fileType=application/pdf](http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1893669/upload_binary/1893669.pdf;fileType=application/pdf).

Australia's Humanitarian Program be increased to 20,000 places per annum from 13,750 and, subject to prevailing economic conditions, to around 27,000 within five years.<sup>77</sup>

The Gillard Government endorsed the recommendations, which would cost an estimated 1 billion Australian dollars annually<sup>78</sup>, and an amended bill titled the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012 was subsequently – on 15 and 16 August – passed by the House of Representatives and the Senate as well, which empowered the Government to re-establish offshore processing facilities in the Pacific.

The Gillard Government sent defence personnel to Nauru and Manus Island in the same month to launch the project of building processing centres being able to host 2,100 asylum seekers. The formal agreement between Prime Minister Gillard and Papua New Guinea PM Peter O'Neill was signed in September, which would allow Australia to send asylum seekers to Manus for processing, where the work commenced immediately. The government has been reported to have plans for sending asylum seekers to either Nauru or Manus Island by the end of the month. At the press conference that followed the signing of the agreement, both PM Gillard and Defence Force Chief Angus Houston emphasised that processed asylum seekers "should wait the same amount of time for resettlement opportunity as if they hadn't moved" and that "the quicker they are processed the better it is", which are in agreement with the expectations of human rights organizations.<sup>79</sup>

After Kevin Rudd regained the leadership of the Labor Party in June 2013 and established his second government, he signed a Regional Resettlement Arrangement with

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<sup>77</sup> Australia, Expert Panel on Asylum Seekers, *Report of the Expert Panel on Asylum Seekers*, 2012. 14. [http://expertpanelonasylumseekers.dpmc.gov.au/sites/default/files/report/expert\\_panel\\_on\\_asylum\\_seekers\\_full\\_report.pdf](http://expertpanelonasylumseekers.dpmc.gov.au/sites/default/files/report/expert_panel_on_asylum_seekers_full_report.pdf).

<sup>78</sup> Michelle Grattan, "PM's Pacific Solution Mark II," *The Age*, 14 August 2012. <http://www.theage.com.au/opinion/political-news/pms-pacific-solution-mark-ii-20120813-24508.html>.

<sup>79</sup> "Australia, PNG sign offshore processing agreement", *ABC News*, 9 September 2012. <http://www.abc.net.au/news/2012-09-08/gillard-signs-agreement-on-png-detention-centre/4250250>.

Papua New Guinea to continue what had been started by the previous Government. The strict policies to come were foreshadowed by PM Kevin Rudd during the press conference:

From now on, any asylum seeker who arrives in Australia by boat will have no chance of being settled in Australia as refugees. Asylum seekers taken to Christmas Island will be sent to Manus and elsewhere in Papua New Guinea for assessment of their refugee status. If they are found to be genuine refugees they will be resettled in Papua New Guinea. [...] If they are found not to be genuine refugees they may be repatriated to their country of origin or be sent to a safe third country other than Australia. These arrangements are contained within the Regional Resettlement Arrangement signed by myself and the Prime Minister of Papua New Guinea just now.<sup>80</sup>

Even before the 2013 Federal Election, it was obvious that should Tony Abbott get elected, he would be even harder on asylum seekers than Prime Minister Rudd, as he often criticised the government's softening of Australia's border protection policies.<sup>81</sup> His approach towards asylum seekers was unambiguously when asked about Australia's immigration policy on national television: "Jesus knew that there was a place for everything and it's not necessarily everyone's place to come to Australia."<sup>82</sup>

Following the Federal Election in September 2013, won by the Liberal-National coalition, Prime Minister Tony Abbott launched a new policy against boat arrivals called Operation Sovereign Borders (OSB). OSB is a military-led border security operation

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<sup>80</sup> "Transcript of joint press conference with PNG Prime Minister Peter O'Neill: Brisbane: 19 July 2013: Regional Resettlement Arrangement," Australia, 19 July 2013.  
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2611766%22>

<sup>81</sup> Michael Harvey, "Tony Abbott's Asylum Sermon," Herald Sun, 6 April 2010.  
<http://www.heraldsun.com.au/news/tony-abbotts-asylum-sermon/story-e6frf7jo-1225850130163>

<sup>82</sup> Tony Abbott qtd. in Michael Harvey, "Tony Abbott's Asylum Sermon," Herald Sun, 6 April 2010.  
<http://www.heraldsun.com.au/news/tony-abbotts-asylum-sermon/story-e6frf7jo-1225850130163>

supported by several federal government agencies and led by Lieutenant General Angus Campbell. The so-called Regional Deterrence Framework was announced during the campaign as a key component of OSB. Its primary aim has been to work together with neighbouring countries (especially Indonesia) to prevent boats from leaving for Australia. In accordance with the RDF, the Government provides large amounts of money to support joint operations with Indonesia, Sri Lanka and Malaysia against people smugglers. This includes investing in aerial surveillance to prevent drownings, in increasing the search and rescue capabilities of the Indonesian authorities and in expanding the offshore processing facilities at Manus Island and Nauru.<sup>83</sup>

The policy also includes actions to engage with the local communities in Indonesia as well. Through this, the Government intends to raise awareness in Indonesia that people smuggling is in fact a criminal activity, enlist local wardens whose task is to provide intelligence to the Indonesian National Police, and convince the local owners of old, unsafe boats to sell their vessels to the Government instead of people smugglers.<sup>84</sup> This last element of the policy was widely ridiculed (“‘Buy the Boats’ has joined ‘Stop the Boats’”<sup>85</sup> in Sydney Morning Herald, referring to the old “Stop the Boats” slogan), but the immigration spokesman of the Coalition, Scott Morrison defended the buyback policy stating that it was “an important tool in the box”, and that it could “save lives” and “saves taxpayers’ money”<sup>86</sup>. In spite of the fact that Coalition politicians, including Tony Abbott, defended the buy-the-boats policy<sup>87</sup>, Lieutenant-General Angus Campbell revealed in a November press conference that no boat

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<sup>83</sup> Liberal Party, “The Coalition’s Policy for a Regional Deterrence Framework to Combat People Smugglers,” August 2013, 2. <http://lpaweb-static.s3.amazonaws.com/13-08-23%20The%20Coalition%E2%80%99s%20Policy%20for%20a%20Regional%20Deterrence%20Framework%20to%20Combat%20People%20Smuggling.pdf>

<sup>84</sup> *ibid.*, 11.

<sup>85</sup> Jonathan Pearlman and Peter Martin, “Indonesia boat buy scheme ‘ridiculous’,” *The Sydney Morning Herald*, 2 September 2013. <http://www.smh.com.au/federal-politics/federal-election-2013/indonesia-boat-buy-scheme-ridiculous-20130901-2sz09.html>

<sup>86</sup> *ibid.*

<sup>87</sup> *ibid.*

had been bought with Government funds up to that point – as he put it, “[this measure] isn’t one the Indonesian government wishes to see being applied right now as part of our cooperative activities – which we respect”<sup>88</sup>.

In spite of the fact that the Liberal-National leaders of Australia fiercely criticise the previous Labor Government on the issue of illegal immigrants, they seem to agree with them on the essence of the issue of offshore processing. According to governmental statistics, while the number of asylum seekers currently processed in Nauru and Papua New Guinea has increased by 232 and 499 respectively, the number of inhabitants of the Christmas Island Processing Centre has decreased by 572.<sup>89</sup>

Although both parties claim that the dropping numbers of boat arrivals is thanks to their own respective policies<sup>90</sup>, it seems that offshore processing together with the stricter border protection policies have a deterring effect of possible asylum seekers.

## 7. Conclusion

We have seen that anti-immigration policies are deeply rooted in the political history of Australia. Although there was a shift towards a more open policy in the approach towards immigrants after the Second World War, the origin (i.e. cultural background) of the given person has always been important in the successive governments’ eyes.

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<sup>88</sup> Angus Campbell qtd. in Emma Griffiths, “Angus Campbell reveals no boats have been purchased under Operation Sovereign Borders,” *ABC News*. <http://www.abc.net.au/news/2013-11-19/indonesia-boat-buyback-estimates/5103066>

<sup>89</sup> *ABC News*, “Operation Sovereign Borders: log of boat arrivals and other asylum seeker incidents,” October 25, 2013. <http://www.abc.net.au/news/2013-10-25/log-of-boat-arrivals-and-other-asylum-seeker-incidents/5014496>

<sup>90</sup> Ireland, Judith. “Both sides claim credit for slowing boat arrivals.” *The Sydney Morning Herald*, October 21, 2013.

In the last few decades, since the first waves of illegal immigrants arriving on boats, public opinion has turned against illegal immigrants, and political leaders seem to have been trying to satisfy the voters' expectations for strict immigration policies. Strangely enough, however, analyses have shown that there is no direct correlation between the changes in the general opinion and the electoral impact of the changes.

As for the criticism of the Pacific Solution, we have found that in spite of the fact that the government seemed to be unprepared for the consequences of the Tampa Affair, the leading party soon found ways to retroactively back up its own acts legally, and it seems that they quickly prepared for the attacks concerning adherence of the policy to international law, as relatively satisfying answers have been given related to the questions of the prohibition of refoulement, arbitrary detention and discrimination. It is not clear if offshore processing has a worse psychological or physical effect on asylum seekers than similar facilities in mainland Australia – so much so that one of the most ill-famed and criticised of them, the former Woomera Immigration Reception and Processing Centre actually lies in the outback of the country. This also means that a large number of criticisms seem to be unfounded.

Although at first glance, the statistics might suggest that the Pacific Solution was indeed successful, deeper analyses seem to have refuted this argument of the government and to have disproven the success of the policy. We have to conclude that the acts comprising the Pacific Solution did not achieve their purpose, i.e. they did not manage to force back illegal immigrants from Australian territories, but brought unwanted international attention to Australia.

Since the arrival of the first boat people, the number of illegal immigrants arriving by such means as well as the policies taken by the different governments has varied in accordance with exterior factors. In spite of the promises that Julia Gillard and Kevin Rudd made, both leaders continued implementing the instruments of the ill-famed Pacific Solution.

It seems now that Tony Abbott's Coalition government is just as determined to go on with controversial policy as their predecessors were – what is more, he seems to be even more resolved to work together with neighbouring countries to keep asylum seekers out of Australian territories.

As both significant sides of Australian politics are constantly seeking the favour of the people, should the public opinion towards immigration change somehow, it is quite likely that a change in policies would occur as well. Although it is common knowledge that public opinion tends to become more radical and extreme in critical times and governments aim to meet their expectations, the first time that bills related to the Pacific Solution were passed, the global financial crisis was still far ahead in the future. Thus, no direct connection can be seen between the actions of the government and the economic situation of the country in this case, meaning that it cannot be stated that the possible end of the global crisis would cause the end of such policies in Australia, too.

## Bibliography

Abbott, Tony. "Address to the Lowy Institute." Address, Sydney, June 8, 2011.

Abbott, Tony quoted in Harvey, Michael. "Tony Abbott's Asylum Sermon." *Herald Sun*, 6 April 2010. <http://www.heraldsun.com.au/news/tony-abbotts-asylum-sermon/story-e6frf7jo-1225850130163>

Alliance of Professionals Concerned about the Health of Asylum Seekers and their Children. *Submission to Human Rights and Equal Opportunity Commission Inquiry into Children in Immigration Detention*. Sydney, May, 2002. [https://www.humanrights.gov.au/sites/default/files/content/human\\_rights/children\\_detention/submissions/109.doc](https://www.humanrights.gov.au/sites/default/files/content/human_rights/children_detention/submissions/109.doc) (accessed April 15, 2014).

Australia. Bureau of Statistics. *Languages Spoken at Home - Australia: 2001 and 1996 Census*. NA. [http://www.crc.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0018/1359/table1p04aust.pdf](http://www.crc.nsw.gov.au/__data/assets/pdf_file/0018/1359/table1p04aust.pdf) (accessed April 15, 2014).

Australia. Bureau of Statistics. *Religious Affiliation - Australia: 2001 and 1996 Census*. NA. [http://www.crc.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0012/1362/table1p06aust.pdf](http://www.crc.nsw.gov.au/__data/assets/pdf_file/0012/1362/table1p06aust.pdf) (accessed April 15, 2014).

Australia. *Commonwealth of Australia Constitution Act*. [http://www.austlii.edu.au/au/legis/cth/consol\\_act/coaca430/s61.html](http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/s61.html)

Australia. Department of Immigration and Citizenship. *Fact Sheet 61 - Seeking Protection Within Australia*. <http://www.immi.gov.au/media/fact-sheets/61protection.htm> (accessed April 15, 2014).

Australia. Department of Immigration and Citizenship. *People of Australia - Statistics from the 2006 Census*. [http://www.dss.gov.au/sites/default/files/documents/01\\_2014/poa-2008.pdf](http://www.dss.gov.au/sites/default/files/documents/01_2014/poa-2008.pdf) (accessed April 15, 2014).

Australia. Expert Panel on Asylum Seekers. *Report of the Expert Panel on Asylum Seekers*. 2012.

[http://expertpanelonasylumseekers.dpmc.gov.au/sites/default/files/report/expert\\_panel\\_on\\_asylum\\_seekers\\_full\\_report.pdf](http://expertpanelonasylumseekers.dpmc.gov.au/sites/default/files/report/expert_panel_on_asylum_seekers_full_report.pdf) (accessed April 15, 2014).

Australian Human Rights Commission. *Inquiry into Australia's agreement with Malaysia in relation to asylum seekers*. 2011.

[https://www.humanrights.gov.au/sites/default/files/content/legal/submissions/2011/20110914\\_asylum\\_seekers.pdf](https://www.humanrights.gov.au/sites/default/files/content/legal/submissions/2011/20110914_asylum_seekers.pdf) (accessed April 15, 2014).

Australia. Parliament of Australia. *Migration Act 1958*.

<http://www.comlaw.gov.au/Series/C2004A07412> (accessed April 15, 2014).

Australia. Parliament of Australia. *Bills Digest No. 62 2001-02 Border Protection (Validation and Enforcement Powers) Bill 2001*.

[http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd0102/02bd062](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd0102/02bd062) (accessed April 15, 2014).

"Australia, PNG sign offshore processing agreement." ABC News, September 9, 2012. <http://www.abc.net.au/news/2012-09-08/gillard-signs-agreement-on-png-detention-centre/4250250> (accessed April 15, 2014).

Australia. Senate Committee. *Certain Maritime Incident*. 2002. [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=maritime\\_incident\\_ctte/report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=maritime_incident_ctte/report/index.htm) (accessed April 15, 2014).

Australia. "Transcript of joint press conference with PNG Prime Minister Peter O'Neill: Brisbane: 19 July 2013: Regional Resettlement Arrangement". 19 July 2013. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2611766%22> (accessed April 15, 2014).

Betts, Katherine. "Boat people and public opinion in Australia." *People and Place* 9, no. 4 (2001): 34-48.

Bohm, Catherine, Moira Coombs, and Michael Klapdor. Australia. Department of Parliamentary Services. *Australian citizenship: a chronology of major developments in policy and law*. 2009. [http://www.citizenship.gov.au/\\_pdf/cit\\_chron\\_policy\\_law.pdf](http://www.citizenship.gov.au/_pdf/cit_chron_policy_law.pdf) (accessed April 15, 2014).

Bowen, Cristopher. "Joint Select Committee Report on Australia's Immigration Detention Network, community detention, bridging visas." *ABC Lateline*. Australian Broadcasting Corporation: 30 March 2012. Television.

Browne, Peter. "Boats and votes: more evidence on the opinion gap." *Inside Story*, 16 July 2010. <http://inside.org.au/boats-and-votes-more-evidence-on-the-opinion-gap/> (accessed April 15, 2014).

Campbell, Agnus qtd. in Emma Griffiths, "Angus Campbell reveals no boats have been purchased under Operation Sovereign Borders". ABC News. <http://www.abc.net.au/news/2013-11-19/indonesia-boat-buyback-estimates/5103066> (accessed April 15, 2014).

*Captured childhood: introducing a new model to ensure the rights and liberty of refugee, asylum seeker and irregular migrant children affected by immigration detention.* Melbourne: International Detention Coalition, 2012.

Creswell, Adam. "Call to abandon 'factories for mental illness'." *Australian*, 26 January 2010. <http://www.theaustralian.com.au/news/nation/call-to-abandon-factories-for-mental-illness/story-e6frg6nf-1225823428382> (accessed April 15, 2014).

Everitt, Jacquie. "Inside Woomera." Refugee Action Committee forum. 10 April 2002. Speech.

Federal Court of Australia. *Ruddock v Vadarlis* (includes corrigendum dated 20 September 2001). [2001] FCA 1329 (18 September 2001). [http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2001/1329.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2001/1329.html) (accessed April 15, 2014).

Fleay, Caroline. "Repeating Despair on Nauru: The Impacts of Offshore Processing on Asylum Seekers." <http://blogs.curtin.edu.au/human-rights-education/files/2012/09/Nauru-report-12-Sept-2012.pdf> (accessed April 15, 2014).

Fox, Peter D.. "International Asylum and Boat People: The Tampa Affair and Australia 's "Pacific Solution."" *Maryland Journal of International Law* 25, no. 1 (2013): 356-372. <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1529&context=mjil> (accessed April 15, 2015).

Gillard, Julia. "Subjects: Asylum seeker legislation; Expert advisory panel." 28 June 2012. Press conference.

Grattan, Michelle. "PM's Pacific Solution Mark II." *The Age*. 14 August 2012. <http://www.theage.com.au/opinion/political-news/pms-pacific-solution-mark-ii-20120813-24508.html> (accessed April 15, 2014).

Griffiths, Emma. 'Angus Campbell reveals no boats have been purchased under Operation Sovereign Borders'. ABC News. <http://www.abc.net.au/news/2013-11-19/indonesia-boat-buyback-estimates/5103066> (accessed April 15, 2014).

Guest, Annie. "Guarded Muslims 'halve census figures'." *ABC News*. 18 July 2011. <http://www.abc.net.au/news/2011-07-18/muslim-population-census-fears/2798462> (accessed 15 April, 2014).

Nathan Hancock. "Refugee Law - Recent Legislative Developments." 18 September 2011. [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/CIB/cib0102/02CIB05](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib0102/02CIB05) (accessed 15 April 2014).

Hand, Gerry. "ALP struggling to exploit Government's woes." *The 7.30 Report*. Australian Broadcasting Corporation: 14 June 2005. Television.

Harvey, Michael. "Tony Abbott's Asylum Sermon." *Herald Sun*, 6 April 2010. <http://www.heraldsun.com.au/news/tony-abbotts-asylum-sermon/story-e6frf7jo-1225850130163>

Hawkins, Freda. *Critical years in immigration: Canada and Australia compared*. Kensington, Australia: New South Wales University Press, 1989.

High Court of Australia, Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship, 2011. <http://www.austlii.edu.au/au/cases/cth/HCA/2011/32.html>

Howard, John. "Election Policy Speech." 28 October 2001. Address. Accessed 4 December 2012. <http://australianpolitics.com/2001/10/28/john-howard-election-policy-speech.html> (accessed April 15, 2014).

Ireland, Judith. "Both sides claim credit for slowing boat arrivals." *The Sydney Morning Herald*, October 21, 2013.

Irving, Helen. "Still Call Australia Home: The Constitution and the Citizen's Right of Abode." *Sydney Law Review* 30, no. 1 (2008): 133-153. [http://sydney.edu.au/law/slr/slr30\\_1/Irving.pdf](http://sydney.edu.au/law/slr/slr30_1/Irving.pdf) (accessed April 15, 2014).

Jupp, James. *From White Australia to Woomera*. United Kingdom: Cambridge University Press, 2002.

---. *The Australian People: An Encyclopedia of the Nation, Its People and Their Origins*. United Kingdom: Cambridge University Press. 2001.

Kazimierz, Bem, Nina Field, Sarah Meyer, and Tony Morris. *A Price Too High: the Cost of Australia's Approach to Asylum Seekers*. A Just Australia, Oxfam Australia and Oxfam Novib, 2007. [http://www.ajustaustralia.com/informationandresources\\_researchandpapers.php?act=papers&id=83](http://www.ajustaustralia.com/informationandresources_researchandpapers.php?act=papers&id=83) (accessed April 15, 2014).

Liberal Party. "The Coalition's Policy for a Regional Deterrence Framework to Combat People Smugglers." August 2013. <http://lpaweb-static.s3.amazonaws.com/13-08-23%20The%20Coalition%E2%80%99s%20Policy%20for%20a%20Regional%20Deterrence%20Framework%20to%20Combat%20People%20Smuggling.pdf> (accessed April 15, 2014).

Lindell, Geoffrey, and R. L. Bennett. *Parliament: the vision in hindsight*. Annandale, N.S.W.: Federation Press, 2001.

Lopez, Mark. "The Politics of the Origins of Multiculturalism: Lobbying and the Power of Influence." Lecture, 10th Biennial Conference of the Australian Population Association from Australian Population Association, Melbourne, November 28, 2000.

Mansted, Rachel. "The Pacific Solution - Assessing Australia's Compliance with International Law." *Bond University Student Law Review* 3, no. 1 (2007): 1-11.

Mathew, Penelope. "Australian Refugee Protection in the Wake of the Tampa." *American Journal of International Law* 96, no. 3 (2002): 661-676.

McGregor, Malcolm. ABC Lateline. Australian Broadcasting Corporation: 2001.  
<http://www.youtube.com/watch?v=NYnizj73kp4> (accessed April 15, 2014).

Mercer, Phil. "Is Australia asylum U-turn a 'better option'?" *BBC News*. 15 August 2012.  
<http://www.bbc.co.uk/news/world-asia-19267489> (accessed April 15, 2014).

"Merriam-Webster.com." <http://www.merriam-webster.com> (accessed April 15, 2014).

Neumann, Klaus. "Anxieties in colonial Mauritius and the erosion of the White Australia Policy." *Journal of Imperial and Commonwealth History* 32, no. 3 (2004): 1-24.  
<http://researchbank.swinburne.edu.au/vital/access/manager/Repository/swin:138> (accessed April 15, 2014).

"Oxford Dictionaries." <http://oxforddictionaries.com/> (accessed April 15, 2014).

*ABC News*, "Operation Sovereign Borders: log of boat arrivals and other asylum seeker incidents," October 25, 2013. <http://www.abc.net.au/news/2013-10-25/log-of-boat-arrivals-and-other-asylum-seeker-incidents/5014496> (accessed April 15, 2014).

Ozdowski, Sev. "Long-term detention and mental health." Speech, Developing Leadership for Mental Health from Dr Sev Ozdowski, Carlton, October 18, 2002.

Pearlman, Jonathan, and Peter Martin. "Indonesia boat buy scheme 'ridiculous'." *The Sydney Morning Herald*, September 2, 2013. <http://www.smh.com.au/federal-politics/federal-election-2013/indonesia-boat-buy-scheme-ridiculous-20130901-2sz09.html> (accessed April 15, 2014).

Pickering, Sharon. *Refugees and state crime*. Sydney: Federation Press, 2005.

Phillips, Janet and Harriet Spinks. "Boat arrivals in Australia since 1976." 5 January 2011. [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2011-2012/BoatArrivals](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals) (accessed 15 April 2014).

---. "Immigration detention in Australia." Accessed 5 January 2011. [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fp\\_rpub%2F1311498%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fp_rpub%2F1311498%22) (accessed 15 April 2014).

Phillips, Janet. "Pacific Solution' revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island." 2012. 4 September 2012.

[http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1893669/upload\\_binary/1893669.pdf;fileType=application/pdf](http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1893669/upload_binary/1893669.pdf;fileType=application/pdf) (accessed 15 April 2014).

Rudd, Kevin. "Kevin Rudd live with Kerry O'Brien." *The 7.30 Report*. Australian Broadcasting Corporation: 21 November 2007. Television.

Schloenhardt, Andreas. *Migrant smuggling: illegal migration and organised crime in Australia and the Asia Pacific region*. Leiden: M. Nijhoff Publishers, 2003.

Spry, Max. "The Executive Power of the commonwealth: its scope and limits." 19 July 2004. [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/RP9596/96rp28](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9596/96rp28) (accessed April 15, 2014).

Silove, Derrick, Philippa McIntosh, and Rise Becker. "Risk of re-traumatisation of asylum-seekers in Australia." *Australian and New Zealand Journal of Psychiatry* 27 (1993): 606-612.

Thompson, Stephen. "Immigration Restriction Act 1901." Migration Heritage Centre. June 2007. <http://www.migrationheritage.nsw.gov.au/exhibition/objectsthroughtime/immigration-restriction-act/> (accessed 15 April, 2014).

Tatz, Simon, and Kim Ryan. "Detention Centres are Factories for Mental Illness." ABC News. 18 November 2011. <http://www.abc.net.au/news/2011-07-06/detention-centres-are-mental-illness-factories/2784388> (accessed April 15, 2014).

UN General Assembly. *Convention Relating to the Status of Refugees*. 28 July 1951. United Nations, Treaty Series, vol. 189, p. 137. <http://www.refworld.org/docid/3be01b964.html> (accessed April 15, 2014).

United Nations. Refugee Agency. 2003 *UNHCR Statistical Yearbook*. <http://www.unhcr.org/42b0195c2.html> (accessed April 15, 2014).

United Nations. Refugee Agency. *Asylum Levels and Trends in Industrialized Countries, 2008*. <http://www.unhcr.org/49c796572.html> (accessed April 15, 2014).

Victoria. Parliament. *An Act to Make Provisions for Certain Immigrants*. 1855. [http://foundingdocs.gov.au/resources/transcripts/vic4\\_doc\\_1855.pdf](http://foundingdocs.gov.au/resources/transcripts/vic4_doc_1855.pdf) (accessed April 15, 2014).

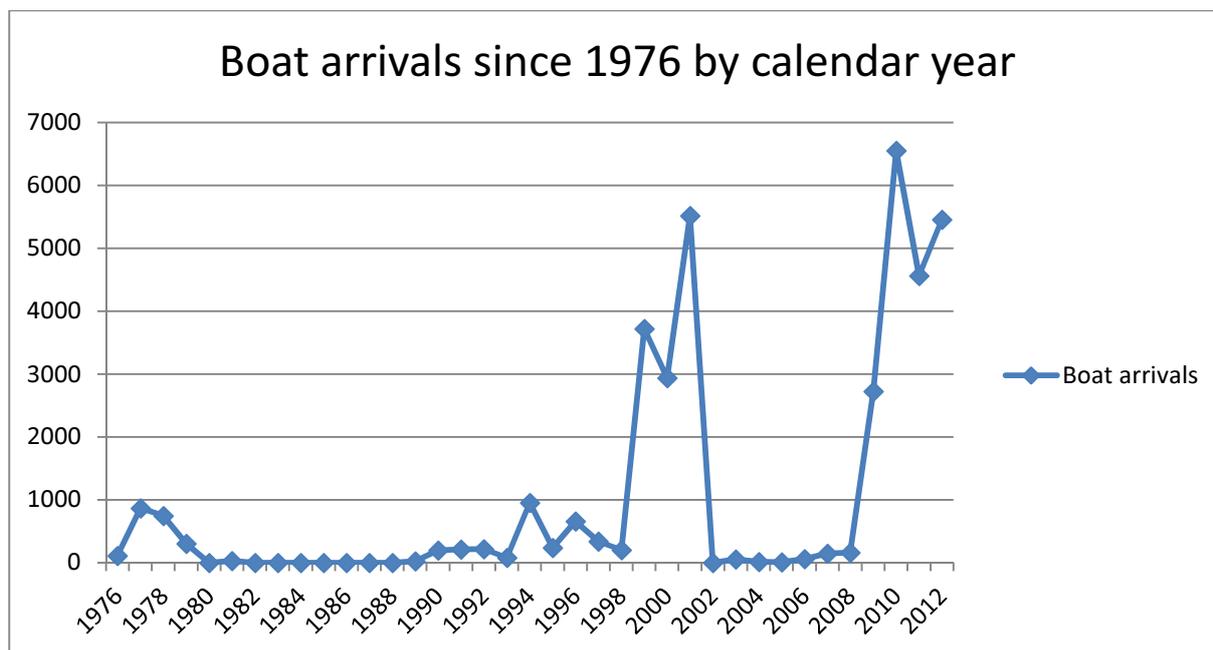
## Appendix

Figure 1: Boat arrivals between 1999 and 2011

Year	Number of boats	Number of people (excludes crew)
<b>1999</b>	86	3721
<b>2000</b>	51	2939
<b>2001</b>	43	5516
<b>2002</b>	1	1
<b>2003</b>	1	53
<b>2004</b>	1	15
<b>2005</b>	4	11
<b>2006</b>	6	60
<b>2007</b>	5	148
<b>2008</b>	7	161
<b>2009</b>	60	2726
<b>2010</b>	134	6555
<b>2011</b>	69	4565

Source: Parliament of Australia, Parliamentary Library, Janet Phillips and Harriet Spinks, Boat Arrivals in Australia Since 1976.

Figure 2: Boat arrivals by calendar year 1979 to 2010



Source: Parliament of Australia, Parliamentary Library, Janet Phillips and Harriet Spinks, Boat Arrivals in Australia Since 1976.

Figure 3: Total Asylum Applications: Australia vs. NZ (1994-2008)

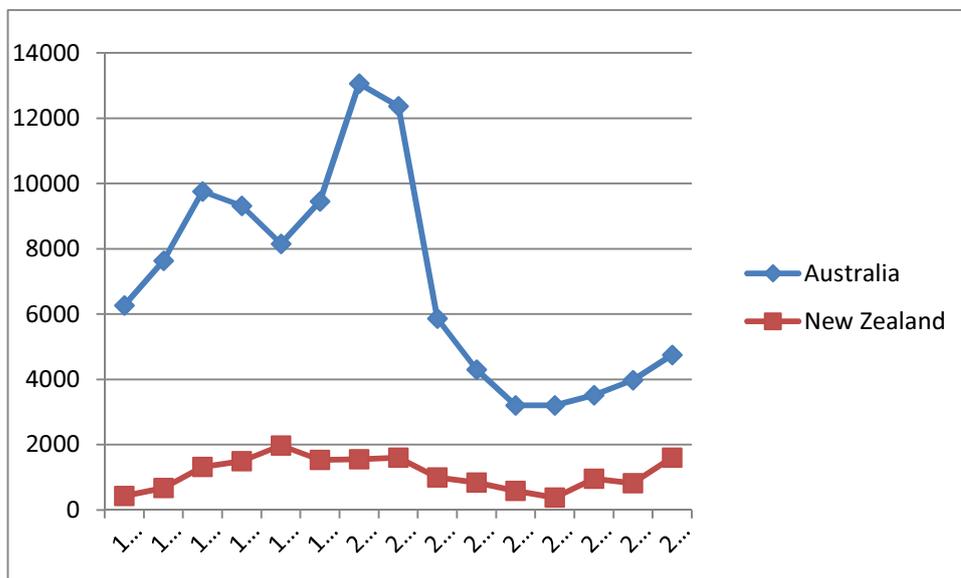


Figure 4: Asylum Applications – Australia and New Zealand Asylum Applications – Comparison of yearly changes

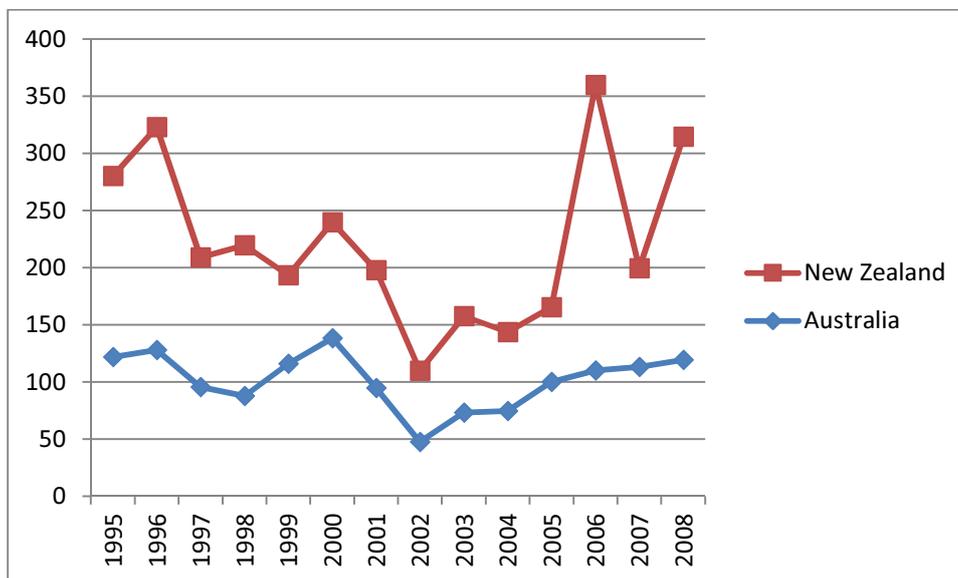


Figure 5: Asylum applications – New Zealand and Australia average

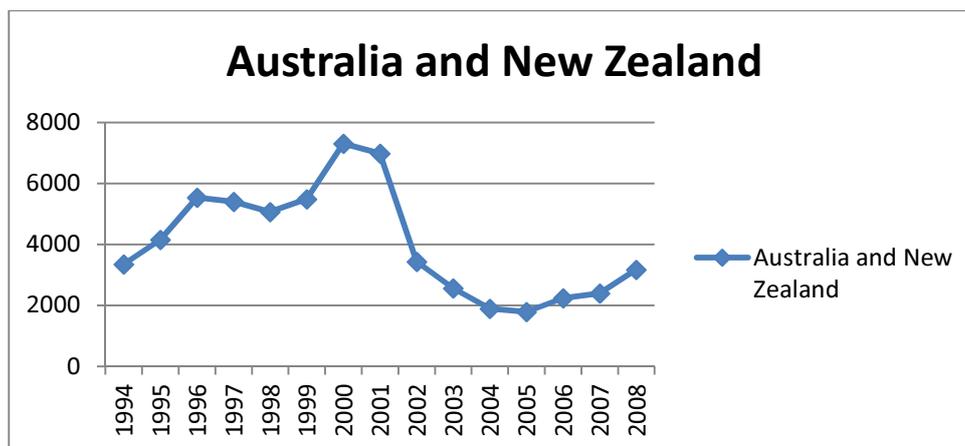


Figure 6: Asylum applications – France, Germany, Italy, Netherlands, Spain average

