

The (Un-)sustainability of Australia's Offshore Processing and Settlement Policy

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1 Introduction

In July 2013 Australia's Labor government announced that asylum seekers who arrived by boat without a valid visa would be denied settlement in Australia. In September 2013, the newly elected Liberal/National government launched 'Operation Sovereign Borders'. The Department of Immigration and Border Protection's website soon featured a picture of a small wooden fishing boat adrift on a rough sea, captioned: 'NO WAY: You Will Not Make Australia Home'.¹

This picture symbolises the Australian government's hard-line policy of deterring asylum seekers from attempting to reach the country by boat. 'Operation Sovereign Borders', in the words of the Minister for Immigration and Border Protection, is intended to apply 'maximum pressure ... from destination to source, to end criminal people smuggling and, as a result, stop the boats'.² Yet this policy does not represent a comprehensive approach to maritime migration or a good faith observance of Australia's commitments under international refugee law. Instead, it is an unsustainable attempt to deflect Australia's international obligations onto third countries within the South-East Asian region, and fails to address the protection needs or human rights of those asylum seekers and refugees to whom Australia has obligations.

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- 1 Australia. Department of Immigration and Border Protection, 'Operation Sovereign Borders', at: <<https://www.border.gov.au/about/operation-sovereign-borders>>.
- 2 Australia. Minister for Immigration and Border Protection, 'Operation Sovereign Borders Update' (Press Conference, Sydney, 25 October 2013), at: <<http://newroom.customs.gov.au/channels/Operation-Sovereign-Borders/releases/minister-for-immigration-and-border-protection-and-commander-of-operation-sovereign-borders-joint-agency-task-force-address-press-conference>>.

What does 'maximum pressure' mean in practice? For most asylum seekers travelling by boat without a valid visa, it means being interdicted at sea and turned back to their country of transit or origin.³ However, for more than 2 000 asylum seekers who attempted the journey between 19 July 2013, when the denial of settlement was announced, and 19 December 2013, when the 'turn back' policy began, 'maximum pressure' has meant being interdicted at sea and sent to offshore detention centres on Manus Island in Papua New Guinea or on the remote Pacific island of Nauru, with no opportunity to 'make Australia home'.⁴

These asylum seekers have faced prolonged, arbitrary detention in harsh conditions, described by human rights advocates and UNHCR as 'return-oriented' environments that may be in violation of international law.⁵ Australian authorities have encouraged them to voluntarily return to their countries of origin.⁶ Asylum seekers are advised that if they do not return and are ultimately found to be refugees, they may only receive temporary settlement in Papua New Guinea or Nauru, or permanent resettlement in Cambodia under a bilateral agreement signed with Australia in September 2014. At the time of writing, Australia was also reportedly negotiating a resettlement deal with other third countries in the region.⁷

3 Australia, Minister for Immigration and Border Protection, 'Operation Sovereign Borders marks milestone year with no boats' (media release, 6 August 2015), at: <<http://www.minister.border.gov.au/peterdutton/2015/Pages/osb-marks-milestone-year-with-no-boats.aspx>>; Australia, Department of Immigration and Border Protection, Operation Sovereign Borders Monthly Update (media release, April 2015), at: <<http://newsroom.border.gov.au/releases/operation-sovereign-borders-monthly-update-april>>.

4 J Phillips, *A comparison of Coalition and Labor government asylum policies in Australia since 2001* Australian Parliamentary Library Research Papers 2013–14, (Canberra, 28 February 2014), at: <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/AsylumPolicies>; Australia, Minister for Immigration and Border Protection, 'Operation Sovereign Borders stands strong' (media release, 25 September 2015), at: <<http://www.minister.border.gov.au/peterdutton/2015/Pages/osb-policy-stands-strong.aspx>>.

5 UNHCR, *UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013* (Canberra, 26 November 2013) 1–2; UNHCR, *UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013* (Canberra, 26 November 2013) 25. See also, Human Rights Law Centre, *Submission to the Senate Legal and Constitutional Affairs References Committee Incident at the Manus Island Detention Centre 16 to 18 February 2014* (2 May 2014) 6–7.

6 UNHCR, *UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013* (n 5) 25.

7 P Hartcher, 'Malcolm Turnbull's new push to resettle refugees on Nauru and Manus Island in third countries', *Sydney Morning Herald* (Sydney, 19 February 2016), at: <<http://www.smh.com.au/federal-politics/political-news/malcolm-turnbulls-new-push-to-resettle-refugees-on-nauru-and-manus-island-in-third-countries-20160219-gmyysq.html>>.