



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*

2008

# Face the Facts



Some Questions and  
Answers about Indigenous  
Peoples, Migrants and  
Refugees and Asylum  
Seekers

# face the facts



# 2008

# Face the Facts

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**Australian  
Human Rights  
Commission**

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The Human Rights and Equal Opportunity Commission changed its name to the Australian Human Rights Commission on 4 September 2008.

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# Foreword

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It is my great pleasure to release the 2008 edition of *Face the Facts*. This publication has become a permanent feature of the Australian Human Rights Commission's, (previously known as the Human Rights and Equal Opportunity Commission), contribution to informed factual public debate about race, Indigenous peoples and cultural diversity in Australia. This edition of *Face the Facts* reflects the continued demand for accurate and easy to understand information about Indigenous peoples, migrants, refugees and asylum seekers. Today, as it was the case in 2005, *Face the Facts* remains the Australian Human Rights Commission's most requested publication. As many of you are aware *Face the Facts* was first published in 1997 and updated in 2001, 2003 and 2005.

*Face the Facts* draws on primary research information from a variety of sources, including laws made by the Australian Parliament, government policies, academic research and statistics gathered by the Australian Bureau of Statistics including the 2006 Census data. The factual information gathered here, from various sources, provides a reliable snapshot of some aspects of the social realities of Australia.

While the structure and the format of the 2008 edition is consistent with previous editions to ensure that *Face the Facts* remains user friendly and accessible, the facts and information have been considerably updated. We have also significantly enhanced the publication to make sure that more relevant topics and recent issues are covered, like information about the *Declaration on the Rights of Indigenous Peoples* and the data on Australia's diverse religious groups.

I believe that education, alongside legislation and policy, are central tools to break down barriers and promote community harmony and inclusion. In the coming few years, the 2008 edition of *Face the Facts* will form a core part of the educational function of the Australian Human Rights Commission as a tool to address attitudes and prejudices that are not based on sound facts.

For teachers, *Face the Facts* is also produced as an education resource that complies with national curriculum standards and this resource can be downloaded from:

[http://www.humanrights.gov.au/education/face\\_facts/index.html](http://www.humanrights.gov.au/education/face_facts/index.html)



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Tom Calma  
Race Discrimination Commissioner

If you want to look more closely at a particular issue, we have included a list of recommended publications and websites. You can also visit the Commission's website to find out more information regarding groups and issues included in *Face the Facts* ([www.humanrights.gov.au](http://www.humanrights.gov.au)). You can also access *Face the Facts* online at: [http://www.humanrights.gov.au/racial\\_discrimination/face\\_facts/index.html](http://www.humanrights.gov.au/racial_discrimination/face_facts/index.html)

I hope that you find this edition of *Face the Facts* to be a useful resource that sheds light on the multifaceted realities of Australia today in order to encourage enlightened debate and thinking based on facts.

A handwritten signature in black ink, appearing to read 'Tom Calma', written in a cursive style.

Tom Calma



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# Chapter 1:

## Questions and Answers about Aboriginal and Torres Strait Islander Peoples

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### 1.1 Who are Aboriginal and Torres Strait Islander peoples?

Aboriginal and Torres Strait Islander peoples are the first peoples of Australia. Old definitions<sup>1</sup> based on skin colour or ‘percentages of Aboriginal blood’ have been replaced by modern definitions which stress ancestry and identification as the key to Aboriginal identity.

Today, the federal government defines an Aboriginal person as someone who:

- is of Aboriginal descent
- identifies as an Aboriginal person
- and
- is accepted as an Aboriginal person by the community in which he or she lives.

Aboriginal peoples comprise diverse Aboriginal nations, many with their own languages and traditions and have historically lived on mainland Australia, Tasmania or on many of the continent’s offshore islands. Torres Strait Islander peoples come from the islands of the Torres Strait, between the tip of Cape York in Queensland and Papua New Guinea. The peoples of the Torres Strait have their own distinct identity, history and cultural traditions. Many Torres Strait Islanders live on mainland Australia.

Aboriginal and Torres Strait Islander peoples retain distinct cultural identities whether they live in urban, regional or remote areas of Australia.

Throughout this publication, Aboriginals and Torres Strait Islanders are referred to as ‘peoples’. This recognises that Aboriginals and Torres Strait Islanders have a collective, rather than purely individual, dimension to their livelihoods.

Throughout this publication, Aboriginal and Torres Strait Islander peoples are also referred to as ‘Indigenous peoples’.

The term ‘Indigenous’ is used to refer to both Aboriginal and Torres Strait Islander peoples. The use of the term ‘indigenous’ has evolved throughout international law. It acknowledges a particular relationship of aboriginal people to the territory from which they originate.<sup>2</sup>

### A note on terminology

The 'A' in 'Aboriginal' is capitalised similar to other designations like 'Australian', 'Arabic' or 'Nordic'. The word 'aboriginal' with a lower case 'a' refers to an indigenous person from any part of the world. As such, it does not necessarily refer to the Aboriginal people of Australia.

'Aboriginal people' is a collective name for the original people of Australia and their descendants, and does not emphasise the diversity of languages, cultural practices and spiritual beliefs. This diversity is acknowledged by adding an 's' to 'people' ('Aboriginal peoples'). 'Aboriginal people' can also be used to refer to more than one Aboriginal person.

In Australia, the 'I' in 'Indigenous' is capitalised when referring specifically to Australian Aboriginal and Torres Strait Islander people. The lower case 'i' for 'indigenous' indicates a generic use for the term in an international context, often when referring to indigenous people originating in more than one region or country such as the Pacific region, Asiatic region, Canada or New Zealand.

**Source:** NSW Department of Health, "Communicating Positively - A guide to appropriate Aboriginal terminology", (2004). At: <http://www.health.nsw.gov.au/pubs/2004/abterminology.html>.

## 1.2 How many Indigenous peoples are there?

**455 028** people identified themselves as 'Indigenous' in the 2006 Census.<sup>3</sup>

- 409 525 of these were Aboriginal peoples.
- 27 302 were Torres Strait Islanders.
- 18 201 identified themselves as both Aboriginal and Torres Strait Islander peoples.

In 2006, 2.3% of the total population of Australia identified themselves as Indigenous. The number of people identifying themselves as Indigenous has increased by 11% since the 2001 Census.<sup>4</sup>

Although 455 028 people identified themselves as Indigenous as part of the 2006 Census, the Australian Bureau of Statistics recommends the estimated resident population (see Table 1.1 below) as the official measure of the Indigenous population. The estimated resident population (ERP) is higher because it has been adjusted for a net undercount of Indigenous people and occasions where Indigenous status is unknown.<sup>5</sup>

## 1.3 Where do Indigenous peoples live? How old are they?

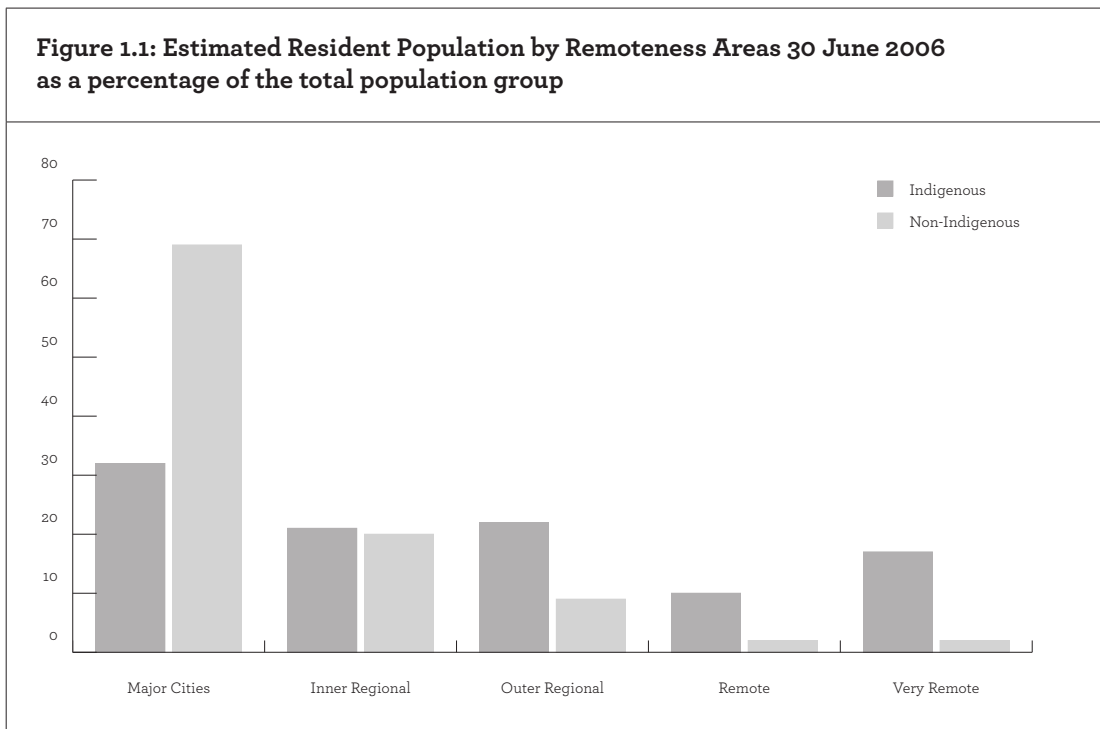
### Place of residence

**Table 1.1: Estimated State or Territory of residence of Indigenous Australians, 2006**

State/Territory	Indigenous population	% of national total Indigenous population*	Total population	Indigenous people as % of State/Territory population
New South Wales	148 178	28.7%	6 817 182	2.2%
Queensland	146 429	28.3%	4 091 546	3.6%
Western Australia	77 928	15.1%	2 059 045	3.8%

Northern Territory	66 582	12.9%	210 674	31.6%
Victoria	30 839	6.0%	5 128 310	0.6%
South Australia	26 044	5.0%	1 568 204	1.7%
Tasmania	16 900	3.3%	489 922	3.4%
ACT	4 043	0.8%	334 225	1.2%
Other Territories	231	0.1%	2 380	9.7%
<b>Australia</b>	<b>517 174</b>	<b>100%</b>	<b>20 701 488</b>	<b>2.5%</b>

**Source:** Australian Bureau of Statistics, *Population Characteristics: Aboriginal and Torres Strait Islander Australians*, Catalogue No. 4713, Table 2.1 *Estimated Resident Population*, (27 March 2008), p. 16.



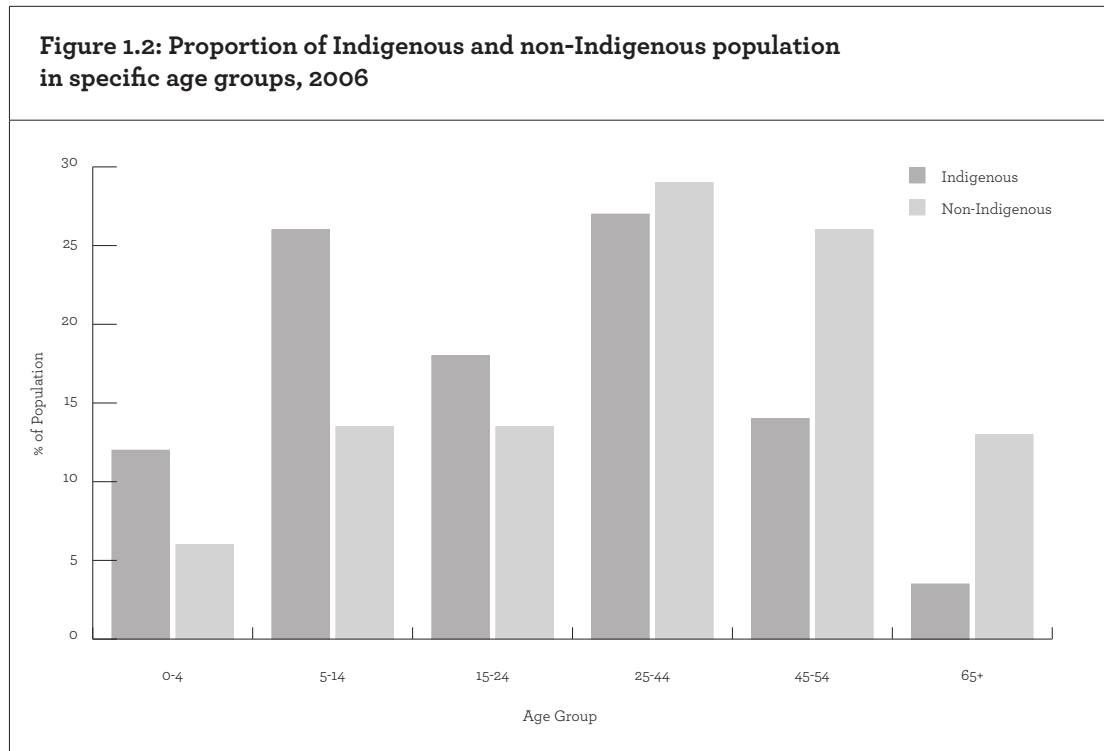
**Source:** Australian Bureau of Statistics, *Population Characteristics: Aboriginal and Torres Strait Islander Australians*, Catalogue No. 4713, Table 2.4 *Estimated Resident Population, by Remoteness Areas*, (27 March 2008), p18.

### Torres Strait Islander peoples

In 2006, the estimated resident population of people of Torres Strait Islander origin was 53 300, accounting for 10% of the Indigenous population and 0.3% of the total Australian population. This estimate includes 20 200 people of both Torres Strait Islander and Aboriginal origin. Approximately 15% of Torres Strait Islander peoples live in the Torres Strait Indigenous Region, nearly half (46%) live in the rest of Queensland and 39% in the remainder of Australia.<sup>6</sup>

## Age

As a whole, the Indigenous population is much younger than the non-Indigenous population. For example, 56.5% of the Indigenous population in Australia are aged under 25 compared with 32.9% of the non-Indigenous population.<sup>7</sup>



**Source:** Australian Bureau of Statistics, *Population Characteristics: Aboriginal and Torres Strait Islander Australians*, Catalogue No. 4713, Table 2.3. *Estimated Resident Population*, (27 March 2008), p. 17.

### 1.4 Are Indigenous peoples disadvantaged?

There are clear disparities between Indigenous and non-Indigenous people in Australia across all indicators of quality of life. Indigenous peoples generally experience lower standards of health, education, employment and housing. They are over-represented in the criminal justice system and the care and protection systems nationally compared to non-Indigenous people.<sup>8</sup>

This disadvantage was highlighted in the National Report of the Royal Commission into Aboriginal Deaths in Custody in 1991. In the Report, Commissioner Elliot Johnston QC stated that:

...the consequence of this history [between Aboriginal peoples and governments] is the partial destruction of Aboriginal culture and a large part of the Aboriginal population and also disadvantage and inequality of Aboriginal people in all the areas of social life where comparison is possible between Aboriginal and non-Aboriginal people.<sup>9</sup>

*The Overcoming Indigenous Disadvantage Report: Key Indicators 2007* details the progress made with ‘closing the gap’ between Indigenous peoples and other Australians, but also highlights the priority areas which need addressing to improve the current quality of life for Indigenous peoples.

Visit: <http://www.pc.gov.au/oid> to read the *Overcoming Indigenous Disadvantage Report: Key Indicators 2007*.

## Health

- **Life expectancy 1996-01:**<sup>10</sup>
  - Indigenous males - 59 years
  - all Australian males - 77 years
  - Indigenous females - 65 years
  - all Australian females - 82 years.
- **Death rate 2001-05:** The death rate for Indigenous peoples aged 35-54 in the Northern Territory, Queensland, South Australia and Western Australia was five times that of the total Australian population. The overall death rate for Indigenous peoples in these four states was twice the death rate for the total Australian population.<sup>11</sup> Across these states around 75% of Indigenous males and 65% of Indigenous females died before the age of 65 years. This is in contrast to the non-Indigenous population where around 26% of males and 16% of females died aged less than 65 years.<sup>12</sup>

### Did you know?

The life expectancy of Indigenous people is around 17 years lower than that of the Australian population.

- **Infant mortality 2001-05:** The infant mortality rate for Indigenous Australians is twice the infant mortality rate for all Australians.<sup>13</sup> For respiratory disease (8%) and external causes (mainly accidents) (4%), the mortality rates for Indigenous infants were eleven and four times higher respectively, compared with non-Indigenous infants.<sup>14</sup>
- **Causes of death 2006:** The three major causes of death for Indigenous peoples are diseases of the heart and blood vessels, cancer, and external causes<sup>15</sup>. Indigenous peoples are more likely than other Australians to die from external causes such as accidents, assault and self-harm (16% of Indigenous deaths compared to 5.7% of non-Indigenous deaths in Australia),<sup>16</sup> and are more likely to die from diseases of the respiratory system and endocrine, nutritional and metabolic systems, such as diabetes.<sup>17</sup>
- **Hospitalisation 2004-05:** Indigenous peoples are 1.3 times more likely to be hospitalised for most diseases and conditions when compared with non-Indigenous people. Hospital admissions were most common amongst older Indigenous peoples (aged 55 years and over) at 31%.<sup>18</sup>
- **Suicide and self harm:** Suicide and self-harm cause a great deal of grief in many Indigenous communities. Suicide rates are higher for Indigenous peoples than other Australians, and particularly for those aged between 25 to 34.<sup>19</sup>
- **General health 2004-05:** Indigenous peoples were nearly twice as likely to report their health as 'fair or poor' (22%) compared to non-Indigenous people.<sup>20</sup> Based on self-reported height and weight, Indigenous peoples aged 15 years and over were 1.2 times more likely to be overweight or obese when compared with non-Indigenous people. Indigenous peoples were 1.6 times more likely to report asthma as a long-term health condition (16%) than the non-Indigenous population. Indigenous peoples were three times more likely to report some form of diabetes than non-Indigenous Australians.<sup>21</sup> In 2004-05, the prevalence of hearing conditions for Indigenous children was three times higher than for non-Indigenous children.<sup>22</sup>

**Table 1.2: Indigenous Self-Assessed Health Status by Remoteness (Locations), 2001, 2004-2005**

Health Status	2001			2004-05		
	Remote	Non-Remote	Total	Remote	Non-Remote	Total
Excellent/ Very Good	35%	42%	40%	41%	44%	43%
Good	43%	30%	33%	40%	33%	35%
Fair/Poor	22%	28%	26%	19%	23%	22%

**Source:** Australian Bureau of Statistics, *National Health Survey: Aboriginal and Torres Strait Islander 2004-05*, Catalogue No. 4715.0, Table 1: *Indigenous Persons: Summary Health Characteristics by Remoteness*, Australia, (2005), p. 17.

#### ▪ **What is the Close the Gap Campaign?**

The Close the Gap Campaign is an Indigenous Health Equality campaign calling on Australian governments to commit to:

- achieving equality of health status and life expectation between Indigenous and non-Indigenous people within 25 years
- achieving equality of access to primary health care and health infrastructure within 10 years for Indigenous peoples

The campaign is run by a coalition of over 40 national health and human rights peak bodies and experts under the leadership of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Visit: [http://www.humanrights.gov.au/social\\_justice/health/targets/index.html](http://www.humanrights.gov.au/social_justice/health/targets/index.html) to read more about the National Indigenous Health Equality Targets.

Visit: <http://www.closesthegap.com.au/> to read more about the Close the Gap Campaign.

### **Education**

- **Educational achievement 2006:** The proportion of Indigenous peoples over 15 years who had completed Year 10 was 33% in major cities and 24% in remote areas. The proportion of Indigenous peoples who had completed Year 12 was 29% in major cities and 13% in remote areas.<sup>23</sup>
- **Higher education 2006:** 6% of Indigenous peoples aged between 18 and 24 years were attending university compared with 25% of non-Indigenous people. Across all age groups, Indigenous peoples were more likely to be attending a technical or further educational institution rather than university. 20% of Indigenous peoples aged 15 years or over in 2001 reported a non-school qualification as compared with 25% in 2006.<sup>24</sup>

### **Employment and income**

- **Labour force participation 2006:** 57% of Indigenous peoples aged 15-64 years were in the labour force compared with 76% of the non-Indigenous population in the same age group.<sup>25</sup>
- **Unemployment 2006:** The unemployment rate was 16% for Indigenous adults compared with 5% of the non-Indigenous population. About 71% of unemployed Indigenous adults were looking for full-time work. The unemployment rate for Indigenous peoples has improved since 2001 when the unemployment rate was 20%.<sup>26</sup>

### Did you know?

In 2006, the unemployment rate for Indigenous people was 16% compared with only 5% for the non-Indigenous population.

- **CDEP:** The Community Development Employment Projects program (CDEP) is an Australian Government funded initiative for unemployed Indigenous peoples. It has been in operation since 1977. It enables local Indigenous organisations to provide employment and training in lieu of social security payments.<sup>27</sup> In 2006, 14 200 Indigenous peoples reported their participation in CDEP.<sup>28</sup>
- **Income 2006:** The average weekly household income for Indigenous peoples (\$460) was only 62% of that for non-Indigenous people (\$740).<sup>29</sup>

### Housing

- **Home ownership 2006:** 63% of Indigenous households live in rental accommodation, 12% of Indigenous households own their homes outright and 24% own their homes with a mortgage. 35% of non-Indigenous households own their homes outright and 36% own their homes with a mortgage.<sup>30</sup>
- **Internet access 2006:** 43% of Indigenous households reported having internet access, compared with 64% of non-Indigenous households.<sup>31</sup>
- **Overcrowding 2004-2005:** 27% of Indigenous peoples were living in overcrowded conditions, with 14% of this figure living in major cities or inner regional areas and 63% in very remote areas.<sup>32</sup> Overcrowding puts stress on basic household facilities and can contribute to the spread of infectious diseases such as skin infections, respiratory infections and eye and ear infections.<sup>33</sup> The highest rate of overcrowding among renters of Indigenous or mainstream community housing was in the Northern Territory, where 61% of Indigenous households were overcrowded.
- **Sewerage service 2006:** In the past 12 months, 142 Indigenous communities experienced sewage overflows or leakages, affecting 30 140 persons.<sup>34</sup> In 2006 there were 51 dwellings in communities not connected to an organised sewerage system, 85 not connected to an electricity supply and 10 not connected to a water supply.
- **Indigenous homelessness:** Indigenous peoples are more likely to experience homelessness than other Australians. The rate of Indigenous homelessness was three times the rate for other Australians in 2006.<sup>35</sup>

**Table 1.3: Number of Homeless Indigenous Persons by State/Territory – 2006**

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	AUST
No conventional accommodation	250	55	469	402	152	24	4	927	2283
Hostel, refuge, night shelter	206	38	198	76	39	9	14	82	662
Friends/relatives	315	70	352	171	67	43	19	134	1171
<b>Total number</b>	<b>771</b>	<b>163</b>	<b>1 019</b>	<b>649</b>	<b>258</b>	<b>76</b>	<b>37</b>	<b>1143</b>	<b>4116</b>

**Source:** Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Catalogue 4704.0, (29 April 2008), p. 2.

### Child abuse and neglect

- Many Indigenous families and communities live under severe social strain, caused by a range of social and economic factors. Alcohol and substance misuse, and overcrowded living conditions are just two of the factors that can contribute to child abuse and violence.
- In 2005-06, Indigenous children were nearly four times as likely as other children to be the subject of abuse or neglect.<sup>36</sup>
- An Indigenous child is six times more likely to be involved with a statutory child protection system than a non-Indigenous child, but four times less likely to have access to child care or preschool service that can offer family support to reduce the risk of child abuse.<sup>37</sup>
- Nationally, Indigenous children are seven times more likely to be in out-of-home care than non-Indigenous children.<sup>38</sup>

### Criminal justice system

- **Adult imprisonment 2007:** Indigenous prisoners represent 24% of the total prison population in Australia. Nationally, the imprisonment rate for Indigenous adults at June 2007 was approximately 13 times that for non-Indigenous adults. In the Northern Territory, 84% of the prison population is reported as being Indigenous, while in Victoria only 6% is reported as being Indigenous. Western Australia recorded the highest imprisonment rate, with Indigenous peoples 21 times more likely to be imprisoned than the non-Indigenous population.<sup>39</sup>
- **Juvenile detention 2006:** Indigenous youth aged 10 to 17 years were 21 times more likely than non-Indigenous youth to be detained in juvenile justice centres (than non-Indigenous peoples of the same age group), although this has begun to trend downwards since 2004.<sup>40</sup>
- **Deaths in custody:** Although Indigenous peoples are now less likely to die in *police* custody compared to 20 years ago, they are more likely to die in *prison* custody. From 1980-89, 67 Indigenous peoples died in police custody and 39 in prison custody.<sup>41</sup> From 1990-99, 51 Indigenous peoples died in police custody and 95 in prison custody. From 2000-05, 44 Indigenous peoples died in police custody and 57 in prison custody.

The *National Report* of the Royal Commission into Aboriginal Deaths in Custody 1991 defines *deaths in prison custody* as any deaths that:

- occur in prison or juvenile detention
- occur during a transfer to or from prison or a juvenile detention centre or a medical facility (following a transfer from a prison or juvenile detention centre).

The National Report identifies two categories of *death in police custody*:

- deaths that occur in institutional settings (police stations or lock ups) or as a result of police operations (where police were in close contact to the deceased).
- other deaths during custody related police operations, for example while attempting to detain someone during a pursuit.

During 2005, 54 people died in all forms of custody in Australia. Of the 54 deaths, 15 were Indigenous peoples. During the period 1990 to 2005, the majority of deaths (62%) occurred in prison custody, while 37% of the deaths occurred in police custody. During this period 19% of all deaths in prison custody during this period were Indigenous peoples.<sup>42</sup>

### Women's disadvantage

- **Women's imprisonment 2007:** In 2007, 31% of all female prisoners were reported as having Indigenous status.<sup>43</sup>
- **Family and domestic violence:** It can be difficult to estimate the incidence of violence against women in Indigenous communities due to under-reporting. The Australian Bureau of Statistics 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) found that 21.2% of Indigenous peoples reported family violence as



a problem in their community. In addition 8.1% reported sexual assault as a problem in their community. The *Overcoming Indigenous Disadvantage: Key Indicators 2005* Report indicated that 18.3% of Indigenous women experienced physical or threatened abuse in the past 12 months compared with 7% of non-Indigenous women.<sup>44</sup>

## 1.5 Do Indigenous peoples get special treatment from the government?

Generally, Indigenous peoples receive the same level of public benefits as non-Indigenous people. Individuals do not receive additional public benefits because they are Indigenous. However, specific government programs, not additional income, have been introduced for Indigenous peoples because they are the most economically and socially disadvantaged group in Australia. Special programs are necessary to help overcome disadvantage. Examples of programs specifically designed to meet Indigenous needs include:

- Community Development Employment Projects program (CDEP)
- Aboriginal Medical Services and Aboriginal Legal Services - provide medical and legal services
- the Indigenous Employment Programme - provides flexible financial assistance to help create employment and training opportunities for Indigenous people in the private sector
- Indigenous education programs such as the Indigenous Tutorial Assistance Scheme (ITAS) and Parent School Partnership Initiative (PSPI).

### Did you know?

**Generally, Indigenous peoples receive the same level of public benefits as non-Indigenous people. Individuals do not receive additional public benefits because they are Indigenous.**

These programs supplement those available to the mainstream population and provide a culturally appropriate alternative. They are necessary because Indigenous peoples do not generally use mainstream services at the same rate as non-Indigenous people and because the level of Indigenous disadvantage is much more severe. These programs aim to close the inequality gap between Indigenous and non-Indigenous Australians. Medical and legal services for low income and migrant communities are also available in Australia and many non-Indigenous people utilise Aboriginal Medical Services.

### Education

Public expenditure on education for Indigenous peoples is 18% higher per capita than for non-Indigenous people aged 3-24 years. The higher expenditure is a result of various factors including location (delivering education in rural and remote locations is more expensive) and lower than average income for Indigenous peoples which leads to a greater average need for student assistance.<sup>45</sup>

### Health

Overall, the estimated expenditure on health services provided to Indigenous peoples during 2004-05 was \$4718 per person. This was 17% higher than the estimated expenditure on services delivered to non-Indigenous Australians.<sup>46</sup> However, given the comparatively poor health indicators for Indigenous peoples, public expenditure on health services for Indigenous Australians may not be sufficient to address their health needs.<sup>47</sup> The difference in health expenditure on Indigenous and non-Indigenous people reflects the differences in income level, health status and cost of delivering health services to remote communities. While the money spent in the public hospital system was high per capita for Indigenous peoples, the money spent outside of the public hospital system on Indigenous Australians was less than half of that for non-Indigenous Australians.<sup>48</sup> Indigenous peoples utilise Medicare and Pharmaceutical Benefits Scheme at a much lower rate than non-Indigenous people.

## 1.6 Indigenous representative bodies in Australia

Over the past 50 years there have been three main national Indigenous representative bodies in Australia:

- the National Aboriginal Consultative Committee (NACC), (established in 1973)
- the National Aboriginal Conference (NAC), (1977-1984)
- the Aboriginal and Torres Strait Islander Commission (ATSIC) (1989-2005).<sup>49</sup>

There are also a range of national, state/territory and regional level Indigenous representative bodies currently in existence in Australia. Some examples include Land Councils and Native Title Representative Bodies and the Torres Strait Islander Regional Authority. In addition, there exists a number of national Indigenous peak bodies that represent different interests of Indigenous service delivery organisations.

In April 2004, the Howard Government announced that the Aboriginal and Torres Strait Islander Commission (ATSIC) and its administrative arm the Aboriginal and Torres Strait Islander Services (ATSIS) were to be abolished.<sup>50</sup> The responsibilities of these Indigenous agencies were transferred to the mainstream government departments that were managing similar programs for all Australians.<sup>51</sup>

The 'new arrangements' for Indigenous Affairs were based on a process of negotiating agreements with Indigenous families and communities at the local level ('Shared Responsibility Agreements') and setting priorities at the regional level ('Regional Participation Agreements'). Central to this negotiation process is the concept of mutual obligation or reciprocity for service delivery.<sup>52</sup>

### What were ATSIC and ATSIS?

**ATSIC stands for Aboriginal and Torres Strait Islander Commission. It was made up of a national Board and Regional Councils whose membership was elected by Indigenous people every three years.**

**ATSIC was established in 1989 and was the main organisation responsible for:**

- **Developing programs for Indigenous people supplementary to mainstream programs and services.**
- **Monitoring how government agencies provide services to Indigenous people.**
- **Advising national, regional and local governments on Indigenous issues.**

**Until 2003, ATSIC was also responsible for administering Aboriginal and Torres Strait Islander programs and making individual funding decisions. From 1 July 2003, these functions were transferred to a new Executive Agency, Aboriginal and Torres Strait Islander Services (ATSIS). ATSIS was required to administer these programs in accordance with the policy directions provided by ATSIC. Under the new arrangements, ATSIS was abolished on 30 June 2004 and its responsibilities transferred to mainstream government departments and agencies.**

**In May 2004, the Government introduced legislation into Parliament to abolish ATSIC, even though the Government sanctioned comprehensive review of ATSIC completed in 2003 recommended ATSIC be retained and strengthened.**

In the absence of ATSIC there is currently no transparent or rigorous process (at a national level) that enables engagement with Indigenous peoples in determining Indigenous policy and priorities and holding governments accountable for their performance.

In 2008, the newly elected Australian Government committed to setting up a national Indigenous representative body to give Aboriginal and Torres Strait Islander peoples a voice in national affairs and policy development. Consultations on this new body are occurring in 2008 and 2009, with the body to be established following this.

For further information on national Indigenous representative bodies see the issues paper 'Building a sustainable National Indigenous Representative Body - Issues for consideration' released by the Aboriginal and Torres Strait Islander Social Justice Commissioner in 2008: [http://www.humanrights.gov.au/social\\_justice/repbody/index.html](http://www.humanrights.gov.au/social_justice/repbody/index.html).

## 1.7 What is the history of government policies on Aboriginal and Torres Strait Islander peoples?

### ***Terra nullius***

From 1788, Australia was treated as a colony of settlement, not of conquest. Indigenous land was taken over by British colonists on the premise that the land belonged to no-one (*terra nullius*). Australia's colonisation resulted in a drastic decline in the Aboriginal population. Estimates of how many Indigenous people lived in Australia at the time of European settlement vary from 300 000 to 1 million. Estimates of the number of Indigenous people who died in frontier conflict also vary widely.<sup>53</sup> While the exact number of Indigenous deaths is unknown, many Indigenous men, women and children died of introduced diseases to which they had no resistance such as smallpox, influenza and measles. Many also died in random killings, punitive expeditions and organised massacres.

The Torres Strait Islands are named after Torres, a Spanish captain, who sailed through the Torres Strait in 1606 on his way to the Philippines. In 1872 Britain and Queensland annexed the Torres Strait Islands up to a point 60 miles from the coast of Cape York. In 1877 the administrative centre was located on Thursday Island. In 1879, the majority of the remaining islands in the Torres Strait were annexed to Queensland.<sup>54</sup>

It is estimated that there were 250 Indigenous languages at the time of European settlement.<sup>55</sup> According to the *National Indigenous Languages Survey Report 2005*:

- only 18 Indigenous languages are now considered strong and have speakers across all age groups.
- around 110 Indigenous languages are still spoken by older people but can be considered endangered.<sup>56</sup>

In the 1992 *Mabo* decision, the High Court of Australia held that the notion of *terra nullius* (owned by no one) should not have applied to Australia.<sup>57</sup> Because of this, the native title rights and interests of Indigenous peoples that existed prior to colonisation can be recognised today under Australian law.

### **Protection policies**

Indigenous survivors of frontier conflicts were moved onto reserves or missions. From the end of the nineteenth century, various state and territory laws were put in place to control relations between Indigenous peoples and other Australians. Under these laws protectors, protection boards and native affairs departments segregated and controlled a large part of the Aboriginal population. It has been estimated that the Aboriginal population during the 1920s had fallen to only about 60 000 from perhaps 300 000 or even one million people in 1788.<sup>58</sup>

### **Assimilation policies**

In 1937, the Commonwealth Government held a national conference on Aboriginal affairs which agreed that Indigenous peoples 'not of full blood' should be absorbed or 'assimilated' into the wider population. The aim of assimilation was to make the 'Aboriginal problem' gradually disappear so that Aboriginal people would lose their identity in the wider community.

Protection and assimilation policies which impacted harshly on Indigenous peoples included separate education for Indigenous children, town curfews, no social security, lower wages, state guardianship of all Indigenous children and laws that segregated Indigenous peoples into separate living areas, mainly on special reserves outside towns or in remote areas.

Another major feature of the assimilation policy was stepping up the forcible removal of Indigenous children from their families and their placement in white institutions or foster homes.<sup>59</sup>

## Stolen Children or Stolen Generations

The Stolen Generations refers to the generations of Indigenous children that were forcibly removed from their families by compulsion, duress or undue influence, as a result of protectionist and child welfare laws, practices and policies in place in Australia for most of the 1900s. The purpose of the removals was to ‘merge’, absorb’, or ‘assimilate’ Indigenous peoples into the non-Indigenous population to attain a similar manner of living as non-Indigenous people.<sup>60</sup>

The history of the Stolen Children varies depending on time and place. Table 1.4 shows where and when Indigenous children could lawfully be taken away without their parents’ consent and without a court order. Non-Indigenous children could also be removed without their parents’ consent, but only by a court finding that the child was uncontrollable, neglected or abused.

Where	When	Why
NSW & ACT	1915-1940	If the Protection Board believed it was in the interest of the moral or physical welfare of the child.
Northern Territory	1911-1964	Being ‘Aboriginal or half-caste’ if the Chief Protector believed it was necessary or desirable.
Queensland	1897-1965	For ‘Aboriginal’ children, and ‘half-cast’ children living with Aboriginal parent(s), if the Minister ordered it. These laws did not apply to Torres Strait Islanders.
South Australia	1923-1962	Legitimate children (that is, children whose parents were lawfully married) could only be removed if they were over 14 or had an education certificate. Illegitimate children could be removed at any time if the Chief Protector and State Children’s Council believed they were neglected.
Victoria	1871-1957	If the Governor of the State was satisfied the child was neglected or left unprotected. From 1899, for the better care, custody, and education of the child.
Western Australia	1909-1954	Police, protectors and justices of the peace could remove any ‘half-caste’ child to a mission. Extended to all ‘natives’ under 21 in 1936.

**Source:** Human Rights and Equal Opportunity Commission, Appendices 1-7, Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, (1997).

### Where were the children placed?

Indigenous children were forcibly removed from their families and communities to the care of non-Indigenous people with the aim of assimilating them into non-Indigenous society. In Queensland, this often meant separating the children into dormitories on reserves. In New South Wales and Western Australia, many children were trained in Indigenous-only institutions to become domestic servants or farm labourers. Other children were transferred to orphanages and children’s homes where Indigenous and non-Indigenous children were brought up together. In other cases, and especially after the 1940s, Indigenous children were fostered or adopted into non-Indigenous families.<sup>61</sup>

### **How many children were removed?**

The full scale of removals is still not known because many records have been lost. In its 1997 *Bringing them home* Report, the Commission estimated that between one-third and one-tenth of all Indigenous children were removed from their homes during the years in which forcible removal laws operated.<sup>62</sup> Subsequent research by Professor Robert Manne estimated the number of Indigenous children removed from their families in the period 1910–70 was closer to the figure of one in ten, or between 20 000 and 25 000 individuals.<sup>63</sup> The 2002 National Aboriginal and Torres Strait Islander Survey (NATSIS) found that approximately 10% of all Indigenous peoples aged 35 years or over reported that they had been taken away from their natural family.<sup>64</sup>

### **What were the consequences of the removals?**

Many members of the Stolen Generation reported during the *Bringing them home Inquiry (conducted between 1995 to 1997)* that they were forbidden to speak Indigenous languages, they were told their parents did not want them, they experienced neglect as well as physical, emotional and sexual abuse, they received little or no education, and were refused contact with their families.

Separating Indigenous children from their parents and communities has been reported to seriously impact on their safety, well being, mental health, cultural identity, and development. The forced removal of Stolen Generations people from their families and communities has in many cases prevented them from acquiring language, culture and the ability to carry out traditional responsibilities. The forced separation of children has also made it difficult for those individuals to establish their genealogical links. Many members of the Stolen Generations still have not been reunited with their families. The legacy of forcible removal remains in the lives of Indigenous individuals and communities today.

The *Bringing them home* Report recommended that for the purposes of responding to the gross violations of human rights that occurred as a result of the forcible removals that reparation be made. In addition to acknowledgement and apology, the report recommended that reparation should include: guarantees against repetition, restitution, rehabilitation and monetary compensation.

Visit [http://www.humanrights.gov.au/social\\_justice/bth\\_report/index.html](http://www.humanrights.gov.au/social_justice/bth_report/index.html) to read the *Bringing them home* Report.

### **Compensation**

To date a national tribunal has not been established to financially compensate members of the Stolen Generations and their families but some state/territory schemes have been established.

#### **Indigenous specific schemes**

In Tasmania, the government passed legislation in 2006 that established a \$5 million fund to provide payments to eligible members of the Stolen Generations who were removed from their families as children by the state government. The Act also enables children of deceased members of the Stolen Generations to apply for a payment. The Scheme concluded in February 2008, with 84 members of the Stolen Generations assessed as eligible to receive \$58 333 and 22 descendants either \$4 000 or \$5 000.

Visit: [http://www.dpac.tas.gov.au/divisions/cdd/oa/stolen\\_generations](http://www.dpac.tas.gov.au/divisions/cdd/oa/stolen_generations) to read more about the Tasmanian scheme.

#### **Non-Indigenous specific schemes**

In Western Australia and Queensland there have been compensation schemes established that compensate for abuse experienced by any person kept in state institutions. Some Stolen Generation members will be eligible under these schemes, although they are not targeted specifically to Stolen Generation members.

In Western Australia the state government announced a \$114 million redress scheme in 2007, known as 'Redress WA', for those who as children were abused while in state care in Western Australia.

Visit: <http://www.redress.wa.gov.au> to read more about the WA Redress compensation scheme.

In Queensland the 1999 report on the Forde Inquiry into the Abuse of Children in Queensland institutions found significant evidence of abuse and neglect of children in Queensland institutions from 1911 to 1999. In response to the report, the Forde Foundation was established to make compensation payments to acknowledge the impact of the past and help them move forward with their lives.

Visit <http://www.communities.qld.gov.au/community/redress-scheme/eligibility.html> to read more about the Forde Foundation compensation scheme.

### **The 1967 Referendum**

Before 1967, Indigenous affairs was a state responsibility and the Commonwealth Government only had responsibility for Indigenous peoples in the Northern Territory.

In May 1967, a Referendum was held to amend the Australian Constitution (sections 51 and 127) to allow Indigenous peoples to be included in the national census, and to give federal Parliament the power to make laws in relation to Indigenous peoples.

The Referendum was passed with a 'Yes' vote of around 91%.

The 1967 Referendum has meant that the Commonwealth Government could make special laws in relation to the Aboriginal 'race' intended to benefit Indigenous peoples. It has also meant that Australia's census now includes information on Indigenous peoples. The 1971 census was the first time Indigenous peoples were included in the census.

Some mistakenly believe that the constitutional amendments provided further citizenship rights to Indigenous peoples, such as the right to vote. But Indigenous peoples' voting rights at the state level had been recognised in Victoria, New South Wales, Tasmania and South Australia since the 1850s. In 1895, South Australia gave women the right to vote, including Indigenous women.<sup>65</sup> Only Queensland and Western Australia barred Indigenous peoples from voting.

At the Commonwealth level, Indigenous peoples' voting rights were restricted by the *Franchise Act 1902* which excluded Aborigines and other 'coloured' people from voting unless they had a state vote.<sup>66</sup> This was further broadened in 1962 when the Commonwealth vote was given to all Indigenous peoples, and by 1965 Indigenous peoples had full and equal voting rights in all states.<sup>67</sup>

Visit: <http://www.aph.gov.au/library/pubs/bp/1996-97/97bp11.htm> to read more about the 1967 Referendum.

### **Equal pay**

Having repeatedly rejected Indigenous claims to equal pay for equal work during the 1930s and 1940s, the Commonwealth Conciliation and Arbitration Commission finally granted Aboriginal stockmen award wages in 1965.<sup>68</sup> This determination had a flow-on effect to other employed Indigenous people nationally.

### **Self-determination policy**

The federal Labor Government led by Prime Minister Gough Whitlam adopted the policy of 'self-determination' for Indigenous communities in 1972. This policy was described as 'Aboriginal communities deciding the pace and nature of their future development as significant components within a diverse Australia'. It recognised that Indigenous peoples had a right to be involved in decision making about their own lives.

### **Self-management policy**

The federal Coalition Government led by Prime Minister Malcolm Fraser, which came to power in late 1975, adopted the policy of 'self-management'. This policy focused on Indigenous communities managing some government projects and funding locally, but with little say in what projects would be created. The Hawke and Keating Labor Governments from 1983-1996 used both self-determination and self-management as key principles in their Indigenous affairs policies. The Coalition Government led by Prime Minister John Howard from 1996 reverted to a policy of self-management.

## Land rights

In 1976, the federal government passed land rights law for Indigenous peoples in the Northern Territory. Most other states also have some form of Land Rights legislation in place although the degree of control given to Indigenous peoples over the land in question differs significantly from state to state.

Visit: [http://www.hreoc.gov.au/social\\_justice/nt\\_report/ntreport05/ch2.html](http://www.hreoc.gov.au/social_justice/nt_report/ntreport05/ch2.html) to read more about Land Rights.

## Native title

In the *Mabo* case of 1992, the High Court of Australia decided that terra nullius (owned by no one) **did not apply**. It found that Indigenous peoples who have maintained a continuing connection with their land according to their traditions and customs may have their rights to land under traditional law recognised in Australian law [see section 1.11, 'What is Native Title?' below for further details.]

## Northern Territory Intervention

On 21 June 2007 the Howard Government announced a 'national emergency response to protect Aboriginal children in the Northern Territory from sexual abuse and family violence.'<sup>69</sup> The national emergency response was also known as the 'Northern Territory Intervention' or the 'Northern Territory Emergency Response' (NTER). The emergency response measures followed the release of a Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse. The report was titled *Ampe Akelyernemane Meke Makarle: Little Children are Sacred*. The *Little Children are Sacred* Report was commissioned by the Chief Minister of the Northern Territory on 30 April 2007 and publicly released on 15 June 2007.

The Intervention was introduced through a set of federal government legislation that included the following measures into the Northern Territory:

- widespread alcohol restrictions on Indigenous land
- income management schemes that partially or completely quarantined welfare recipients' income
- abolition of the Community Development Employment Projects program
- enforcing school attendance by linking income support and family assistance payments to school attendance for all people living on Indigenous land and providing meals for children at school at parents' cost
- introducing compulsory health checks for all Indigenous children
- acquiring townships prescribed by the Australian Government through five year leases including payment compensation
- increasing policing levels in prescribed communities
- intensified ground clean up and repair of communities to make them safer and healthier by marshalling local workforces through work-for-the-dole
- improving housing and reforming community living arrangements in prescribed communities including the introduction of market based rents and normal tenancy arrangements
- banning the possession of X-rated pornography and introducing audits of all publicly funded computers to identify illegal material
- removing the permit system for common areas, road corridors and airstrips for prescribed communities on Indigenous land
- improving governance by appointing managers of all government business in prescribed communities.<sup>70</sup>

The Intervention measures were also exempted from the application of Australia's *Racial Discrimination Act 1975 (Cth)* and Northern Territory anti-discrimination legislation.<sup>71</sup>

The current Rudd government has conducted an independent review of the Intervention 12 months after it commenced. Visit: <http://www.nterreview.gov.au/report.htm> to read the report.

Visit: [http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa\\_final\\_report.pdf](http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf) to read the *Little Children are Sacred* Report.

For a human rights analysis of the Northern Territory Intervention visit: [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport07/chap3.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/chap3.html).

## 1.8 What is Aboriginal reconciliation?

Reconciliation is a process of improving, renewing or transforming relations between Indigenous and non-Indigenous people for the future, which are based on: understanding the historical relationship between Indigenous and non-Indigenous people; understanding the past injustices and impacts of colonisation and dispossession on Indigenous peoples; and respecting the cultures, identities and rights of Indigenous peoples.<sup>72</sup>

In 1991 the Council for Aboriginal Reconciliation was established for a 10 year period to promote reconciliation between Indigenous peoples and the wider Australian community. The Council was established by legislation with 25 Indigenous and non-Indigenous members appointed by the Federal Government. At the end of its 10 year period, the Council was also required to make recommendations to the government on actions for achieving reconciliation.

In 2000, the Council provided the Australian people and government with a declaration towards reconciliation, a *Roadmap for Reconciliation* which contains four national strategies and a final report, titled *Reconciliation: Australia's Challenge*, which sets out a comprehensive program of activities to address the 'unfinished business' of reconciliation. The Council's proposals identified four priority areas for achieving reconciliation: achieving economic independence, overcoming Indigenous disadvantage, recognising Indigenous rights and sustaining the reconciliation process.

Reconciliation Australia was established as an independent not-for-profit organisation in December 2000 to carry forward the reconciliation work of the Council.

Visit: <http://www.austlii.edu.au/au/orgs/car/docrec/relevant/docbook/p4.htm> to read more information on the Council for Aboriginal Reconciliation.

Visit: <http://www.reconciliation.org.au/i-cms.jsp> to read more about the work of Reconciliation Australia.

### The Apology

On the 13 February 2008 Prime Minister Kevin Rudd apologised on behalf of all Australians for the laws and policies which afflicted pain, suffering and loss on the 'Stolen Generations' of Indigenous peoples.<sup>73</sup> The Apology was adopted with the support of all political parties.

The national Apology was a recommendation of the *Bringing them home* Report 1997 (section 5(a)).<sup>74</sup> The report identified that a national apology would contribute to the proper recognition of Indigenous Australians as our first nations peoples and national healing and reconciliation.

In recognition and respect, the national Apology should be spelt with a capital 'A'.



## The Apology

I move:

That today we honour the Indigenous peoples of this land, the oldest continuing cultures in human history.

We reflect on their past mistreatment.

We reflect in particular on the mistreatment of those who were Stolen Generations—this blemished chapter in our nation's history.

The time has now come for the nation to turn a new page in Australia's history by righting the wrongs of the past and so moving forward with confidence to the future.

We apologise for the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians.

We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country.

For the pain, suffering and hurt of these Stolen Generations, their descendants and for their families left behind, we say sorry.

To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry.

And for the indignity and degradation thus inflicted on a proud people and a proud culture, we say sorry.

We the Parliament of Australia respectfully request that this apology be received in the spirit in which it is offered as part of the healing of the nation.

For the future we take heart; resolving that this new page in the history of our great continent can now be written.

We today take this first step by acknowledging the past and laying claim to a future that embraces all Australians

A future where this Parliament resolves that the injustices of the past must never, never happen again.

A future where we harness the determination of all Australians, Indigenous and non-Indigenous, to close the gap that lies between us in life expectancy, educational achievement and economic opportunity.

A future where we embrace the possibility of new solutions to enduring problems where old approaches have failed.

A future based on mutual respect, mutual resolve and mutual responsibility.

A future where all Australians, whatever their origins, are truly equal partners, with equal opportunities and with an equal stake in shaping the next chapter in the history of this great country, Australia.

*The Prime Minister the Hon Kevin Rudd*

## 1.9 The Declaration on the Rights of Indigenous Peoples

On the 14th September 2007 the United Nations adopted the *Declaration of the Rights of Indigenous Peoples*. The adoption of the Declaration concludes a 30 year process that had its origins in the late 1970s and that was led by the United Nations Working Group on Indigenous Populations since 1984.

The Declaration sets out how existing human rights apply to the situation of Indigenous peoples. It includes:

- The right of indigenous peoples to enjoy all human rights, non-discrimination, self-determination and autonomy, maintenance of indigenous institutions and the right to a nationality (Articles 1-6).
- **Life, integrity and security** (Articles 7-10): the rights to freedom from genocide, forced assimilation or destruction of culture, forced relocation from land, right to integrity and security of the person, and right to belong to an Indigenous community or nation.
- **Cultural, spiritual and linguistic identity** (Articles 11-13): rights to practice and revitalise culture and the transmission of histories and languages, as well as the protection of traditions, sites, ceremonial objects and repatriation of remains.
- **Education, information and labour rights** (Articles 14-17): rights to education, access to media (both mainstream and indigenous specific) and rights to protection of labour law and from economic exploitation.
- **Participatory, development and other economic and social rights** (Articles 18-24): rights to participation in decision-making, through representative bodies; rights to their own institutions to secure subsistence and development; special measures to be adopted to address indigenous disadvantage and ensure non-discriminatory enjoyment of rights; guarantees against violence and discrimination for women and children; right to development; and access to traditional health practices and medicines.
- **Land, territories and resources rights** (Articles 25-32): rights to maintain traditional connections to land and territories; ownership of such lands and protection of lands by State; establishment of systems to recognise indigenous lands; rights to redress and compensation for lands that have been taken; conservation and protection of the environment; measures relating to storage of hazardous waste and military activities on indigenous lands; protection of traditional knowledge, cultural heritage and expressions and intellectual property; and processes for development on indigenous land.
- **Indigenous institutions** (Article 33-37): rights to determine membership and to maintain institutions (including judicial systems), to determine responsibilities of individuals to their communities, to maintain relations across international borders, and right to the recognition of treaties, agreements and other constructive arrangements with States.

In addition, the Declaration recognises the principle of free, prior and informed consent (see Articles 11 and 32). The principle of free, prior and informed consent can be applicable in a number of contexts including: access to and use of indigenous lands and territories, natural resources, traditional knowledge etc. and in relation to the development and implementation of any laws, policies and programs dealing with or affecting indigenous peoples.<sup>75</sup>

Visit: <http://www.un.org/esa/socdev/unpfi/en/drip.html> to view the Declaration.

Visit: [http://www.humanrights.gov.au/social\\_justice/declaration/index.html](http://www.humanrights.gov.au/social_justice/declaration/index.html) for more information about the Declaration and its impact in Australia.

## 1.10 What is the right to self-determination?

Self-determination is the right of all peoples of the world to 'freely determine their political status and freely pursue their economic, social and cultural development' (Article 1 of the *International Convention on Civil and Political Rights*).<sup>76</sup> Self-determination is a collective right (belonging to 'peoples') rather than an individual right.

The right to self-determination for indigenous peoples has been clearly recognised in the Declaration on the Rights of Indigenous Peoples.

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

This right must be exercised consistently with international law. This means that that the Declaration does not authorise the territorial integrity of a nation to be affected, or authorise secession. This is guaranteed in Article 46 (1) of the Declaration which states:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

In practice, recognising the right to self determination means a government recognises indigenous peoples' distinct cultures and forms of social organisation, governance and decision-making; and transfers responsibility and power for decision-making to indigenous communities so they can make decisions in relation to issues that affect them.

### 1.11 What is native title?

'Native title' is the name given by Australian law to Indigenous peoples' traditional rights to their lands and waters. Those rights can range from a relationship similar to full ownership of the land through to the right to go onto the land for ceremonies or to hunt, fish or gather foods and bush medicines. To have their native title rights recognised, the Indigenous group has to prove they still have a connection with their country according to their traditional laws.

In many cases native title rights and interests are extinguished by the creation of titles and interests in land following colonisation. However, in some cases Indigenous and non-Indigenous interests in land can co-exist - for example, Indigenous peoples might be able to visit their country freely even though it is on a cattle station. Wherever there is a conflict between the two sets of interests, the non-Indigenous interest will prevail.

#### Did you know?

**Native title rights can range from a relationship similar to full ownership of the land through to the right to go onto the land for ceremonies or to hunt, fish or gather foods and bush medicines.**

Native title cannot be recognised on land which is fully owned by someone else. It can only be recognised in areas like:

- vacant land owned by the government (this is called 'Crown Land')
- some national parks and forests
- some pastoral leases (where the pastoralist rents a cattle or sheep station from the government without owning the land)
- Aboriginal reserves
- beaches, seas, lakes and rivers that are not privately owned.

#### How many native title determinations have been made?

As at 24 September 2008, the total number of native title determinations (decisions made on a claim) in Australia numbered 116. Of these, 81 were determinations that native title exists.<sup>77</sup>

Visit: <http://www.nntt.gov.au/> to read more about native title determinations.

#### Is native title the same as land rights?

Native title is not the same as land rights. Land rights are granted through legislation whereas native title is the recognition of rights based on the traditional laws and customs that existed before colonial occupation. Unlike land rights, native title rights are not granted by government so cannot be withheld or withdrawn by Parliament or the Crown, although they can be extinguished by an Act of government.

A land rights grant may cover traditional land, an Aboriginal reserve, an Aboriginal mission or cemetery, Crown Land or a national park. Native Title only covers land on which a traditional relationship continues to exist from the time of colonisation.

Land for Aboriginal communities or enterprises may also be purchased with money from the Aboriginal and Torres Strait Islander Land Account (formerly Land Fund) created in 1995. The Land Account was the second part of the federal government's response to the High Court's *Mabo* decision (the first part of the response being the introduction of native title legislation), in recognition of the fact that the majority of Indigenous peoples had been dispossessed and would be unable to regain ownership and control of their land through native title processes.

### **Native title landmarks**

#### **1992: First recognition of native title – the *Mabo* case**

In the *Mabo* case of 1992, the High Court of Australia recognised the native title rights of the Meriam people of the Torres Strait. It recognised for the first time that Indigenous peoples who have maintained a continuing connection with their country, according to their traditions and customs, may have their rights to land under traditional law recognised in Australian law.

Visit: [http://www.austlii.edu.au/au/cases/cth/high\\_ct/175clr1.html](http://www.austlii.edu.au/au/cases/cth/high_ct/175clr1.html) to read more information about the case.

Visit: [http://www.adcq.qld.gov.au/pubs/Mabo\\_oration.rtf](http://www.adcq.qld.gov.au/pubs/Mabo_oration.rtf) to read the inaugural Queensland *Mabo* Oration delivered by Noel Pearson, Cape York Institute in 2005.

Visit: <http://www.adcq.qld.gov.au/ATSI/FindingthePromise.html> to read the *Mabo* Oration delivered by Professor Larissa Behrendt, University of Technology, Sydney in 2007.

#### **1993: *The Native Title Act 1993***

In 1993, the *Native Title Act* was passed to recognise and protect surviving native title rights throughout Australia and set up a process for settling claims and conflicts about native title.

The Act:

- established a claim process for Indigenous peoples seeking recognition of native title including the establishment of the National Native Title Tribunal
- provided a definition of native title
- provided that, in relation to future developments on the land, native title would have no lesser protection than other interests in land
- allowed Indigenous groups claiming native title to negotiate about mining developments proposed on the land *before* proving their claim (the 'right to negotiate')
- validated non-Indigenous interests that would have been invalid as a result of the recognition of native title.

Visit: <http://www.nntt.gov.au/What-Is-Native-Title/Pages/What-is-Native-Title.aspx> for more information about the *Native Title Act 1993*.

#### **1996: The question of pastoral leases – the *Wik* Case**

In the 1996 *Wik* case, the High Court held that pastoral leases in Queensland do not necessarily cancel out native title rights and interests, and that they could co-exist with the rights of pastoralists.

Visit: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1996/40.html?query=wik> for more information about the case.

### 1998: The *Wik* amendments to the *Native Title Act*

In response to the *Wik* case, the federal government amended the *Native Title Act*.

The amendments:

- reduced the right to negotiate so that it only applies to mining activities and some compulsory acquisitions
- validated leases granted by governments that were thought to be invalid because of native title, and confirmed the extinguishment of native title on a range of leases and other land tenures, such as freehold land
- upgraded pastoral leaseholds by increasing the activities that could take place under the lease without having to negotiate with native title holders
- made it more difficult to register native title applications
- introduced 'Indigenous Land Use Agreements' (ILUAs) which provide native title groups with an opportunity to negotiate voluntary but binding agreements with others, including pastoralists and mining companies, about their lands and waters.

The 1998 amendments to the *Native Title Act* were referred to the United Nations Committee for the Elimination of all forms of Racial Discrimination (CERD) and found to be in breach of Australia's international human rights obligations. CERD has since twice reaffirmed its findings and continues to criticise the Australian Government for their failure to address this breach.

### 2001: *Croker Island (Commonwealth v Yarmirr)*

The *Croker Island* case recognised that native title could exist on sea country but that any native title rights that were recognised must not exclude the rights of any other person.

Visit: <http://www.austlii.edu.au/au/cases/cth/HCA/2001/56.html> to read more information about the case.

### 2002: *Ward (Western Australia v Ward)*

In the *Ward* case, the High Court found that native title is made up of a bundle of rights and that these rights can be extinguished either in part or as a whole. One way native title rights are extinguished is by the grant of inconsistent non-Indigenous interests in the same area of land. For example, the creation of a pastoral lease in Western Australia extinguishes the right of the traditional owners to exclusive possession of that land. However, it does not extinguish the rights of the traditional owners to enter the land in order to hunt or fish or perform ceremonies, because these rights can co-exist with the rights of the pastoralist. In the case of freehold, native title is completely extinguished.

Visit: <http://www.austlii.edu.au/au/cases/cth/HCA/2002/28.html> to read more information about the case.

### 2002: *Yorta Yorta (Members of the Yorta Yorta Community v Victoria)*

The High Court found that in order to have native title recognised the claimant group must show that it, or its members, have practised their traditional laws and customs continuously since European settlement.

Visit: [www.austlii.edu.au/au/cases/cth/HCA/2002/58.html](http://www.austlii.edu.au/au/cases/cth/HCA/2002/58.html) to read more information about the case.

## Further reading

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# Chapter 2:

## Questions and Answers about Migrants and Multiculturalism

.....

### 2.1 How many people migrate to Australia?

In 2007-08, the number of new migrants who settled permanently in Australia was **205 940**.<sup>1</sup> The Department of Immigration and Citizenship (DIAC) and the Australian Bureau of Statistics (ABS) defines 'settled permanently' as:

- those persons who are already in Australia on a temporary basis and are granted permanent residence status
- those persons who arrive from an overseas destination and are entitled to stay permanently in Australia.

This figure includes:

- **149 365** people living overseas who applied for and were granted a visa allowing them to enter and stay permanently in Australia (these are called 'settler arrivals')
- **56 575** people already living in Australia on temporary visa arrangements (such as student or business visas) who applied for and were granted a visa allowing them to stay permanently in Australia.<sup>2</sup>

#### Overseas migrants

In 2007-08, **149 365** new settlers arrived in Australia from overseas. This figure includes: 65 404 (43.8%) under the Skill Stream, 38 404 (25.7%) under the Family Stream, 9507 (6.4%) as refugees and humanitarian entrants, 131 (0.09%) who qualified under special eligibility criteria, 34 491 (23.1%) New Zealanders (who freely enter Australia to live and work under the Trans-Tasman Travel Agreement) and 1428 (1.0%) others, including former citizens returning to Australia.<sup>3</sup>

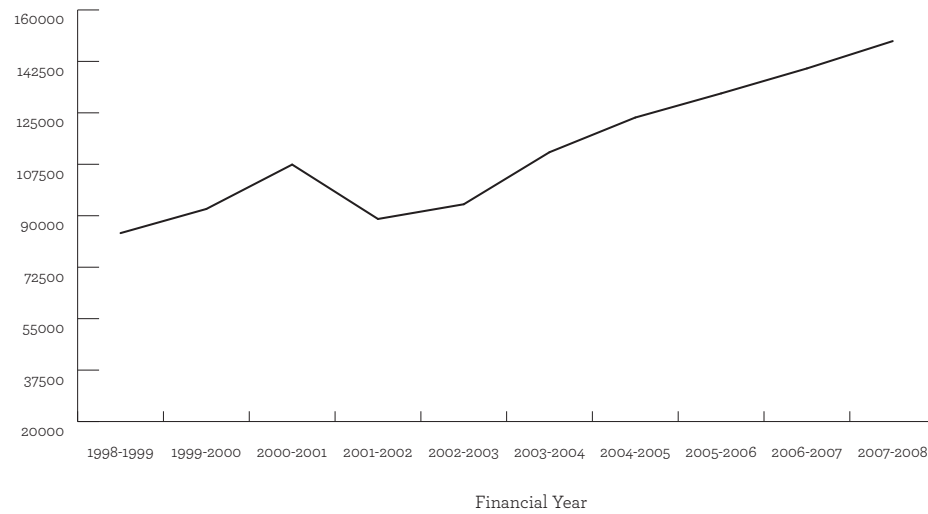
The number of settler arrivals changes each year according to the number of visas issued by the (DIAC). Figure 2.1 shows these changes.

#### Did you know?

**In 2007-08, new migrants who settled permanently in Australia increased by 7.3% compared to 2006-07.**

**Source:** Department of Immigration and Citizenship, Immigration Update 2007-08, (forthcoming 2009).

**Figure 2.1: Settler arrivals, 1998-2008**



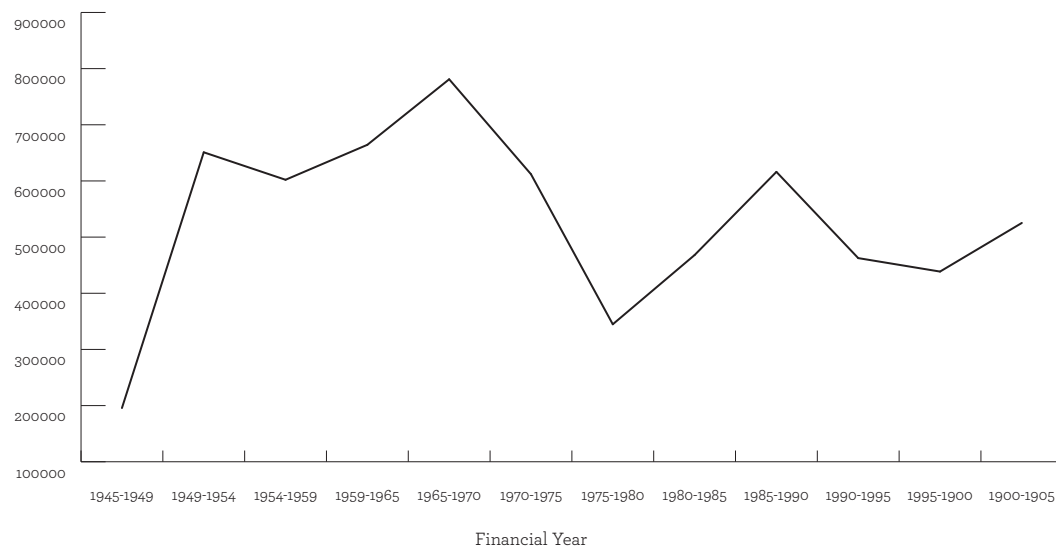
**Source:** Department of Immigration and Citizenship *Facts in Immigration*, Fact Sheet 2. At: <http://www.immi.gov.au/media/fact-sheets/02key.htm> (viewed 8 October 2008).

### Post-war migration

Since 1945, 6.8 million people have come to Australia as new settlers. Australia received more than 900 000 migrants since the year 2000, compared with:

- over 900 000 in the 1990s
- 1.1 million in the 1980s
- 960 000 in the 1970s
- 1.3 million in the 1960s
- 1.6 million between 1946 and 1960.<sup>4</sup>

**Figure 2.2: Settler arrivals in Australia: October 1945-June 2005**



\* This group contains six financial years.

\*\* The data to 1959 was for permanent and long term arrivals.

**Source:** Department of Immigration and Citizenship, *Immigration: Federation to Century's End 1901-2000*, (2001), p. 26-27. At: <http://www.immi.gov.au/media/publications/statistics/federation/federation.pdf> (viewed 15 March 2008).

## Onshore migrants

Settler arrival statistics do not tell the full story about permanent migration. In recent years, a growing number of people who are already in Australia on temporary visas (such as student or business visas) have applied for, and been granted, visas allowing them to stay permanently in Australia.

In 2007-08, **56 575** people already in Australia were granted visas allowing them to stay permanently in Australia. This figure includes 42 065 (74.4%) under the Skill Stream, 12 276 (21.7) under the Family Stream, 12 (0.02%) under special eligibility, and 2222 (3.9%) as refugees and humanitarian entrants.<sup>5</sup>

The combination of settler arrivals from overseas and permanent settlement by persons already in Australia is referred to as 'permanent additions to Australia's population'.

## 2.2 Where do migrants come from?

Until the 1970s, the White Australia Policy restricted immigration from non-European countries.<sup>6</sup> Today people can apply for a visa to settle permanently in Australia regardless of their ethnic origin, race, religion or gender.

In 2007-08, the top 10 countries of birth of permanent settlers (onshore and arrivals) were: United Kingdom (30 841); New Zealand (27 619); India (22 688); China (excluding Hong Kong, Macau and Taiwan) (21 208); South Africa (7762); Philippines (7382); Malaysia (5139); Korea (4953); Sri Lanka (4824); Thailand (3384) comprising 66% of the total.<sup>7</sup> The remaining 34% of permanent settlers were born in over 190 other countries. Opening immigration to people from a large number of countries has resulted in a great diversity of established and emerging ethnic communities in Australia.

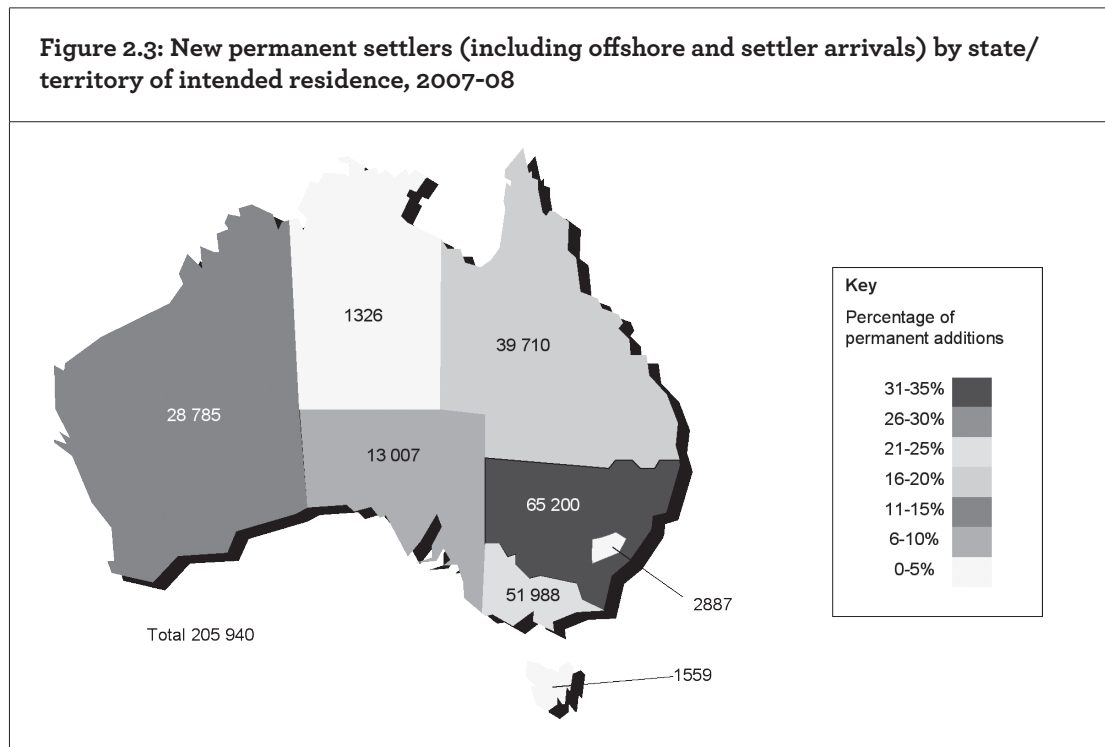
## 2.3 Who can migrate?

New Zealanders can enter, live and work in Australia under the terms of the Trans-Tasman Travel Agreement and do not need a visa. All other migrants must apply for a visa to come to Australia. To get a visa, migrants must pass health and character checks and meet certain entrance criteria depending on the category they fit into. They are selected by the Department of Immigration and Citizenship (DIAC) under the following broad categories:

- **Skill Stream Migrants** are migrants who have skills or outstanding abilities that will contribute to the Australian economy.<sup>8</sup> In 2007-08, 107 469 people migrated to Australia as skilled migrants, representing about 52% of total migration to Australia. This is an increase from 98 918 skilled migrants in 2006-07. There are several categories of skill stream migrants who are granted visas based on a variety of eligibility criteria:<sup>9</sup>
  - **Independent Skilled Migrants** are skilled migrants who are not sponsored by a relative or employer and must pass a points test to be granted a visa. The aim of the points test is to identify factors in the applicant that will either benefit Australia or help with settlement. The accumulation of points is based on the migrant's age, skills, qualifications, English language ability and employability, so they can contribute quickly to the Australian economy. These 'independent skilled migrants' form the largest component of skilled migrants each year. In 2007-08, 54 743 independent skilled migrants came to Australia, representing 51% of the total number of skilled migrants who came to Australia.
  - **State/Territory Nominated Independent Migrants** are people who are interested in settling in states or territories where their skills are in demand and have a sound chance of gaining employment in that state or territory soon after arrival. Skill matching is included under this category. There were 3435 migrants in this category in 2007-08.
  - **Regional Sponsored/Independent Migrants** can be independent or sponsored by an eligible relative or by a state or territory to live and work in a regional or low population growth metropolitan area in Australia. There were 4526 migrants in this category in 2007-08.

- **Australian Sponsored Skilled Migrants** are sponsored by Australian citizens who are related to them or by a state or territory government agency. Applicants must meet a points test which takes into account their age and work skills as well as various sponsor attributes. The Skilled Sponsored visa: introduced on 1 September 2007 for persons with good English language skills who have skills and qualifications in an occupation in need in Australia and who are sponsored by an eligible relative living in Australia or who obtain nomination from a participating state or territory government agency. There were 8343 Australian Sponsored Migrants in 2007-08.
  - **Employer Nominated Migrants** are skilled migrants who are ‘sponsored’ by an employer. These migrants may already be working for that employer in another country and wish to transfer to Australia or may be new employees brought in to fill particular skill shortages or vacancies, particularly in regional areas of Australia. In 2007-08, 23 099 employer nominated migrants were sponsored to migrate to Australia.
  - **Business Skills Migrants** are successful business people with established skills in business who have a genuine commitment to owning and managing a business in Australia. 6532 migrants entered Australia in 2007-08 under this category.
  - **Distinguished Talent Migrants** are individuals who have outstanding records of achievement in a profession, occupation, the arts or sport. This is a small migrant category and included 213 migrants in 2007-08.<sup>10</sup>
- **Family Stream Migrants** are chosen according to their relationship with a sponsor who must be a close family member and an Australian resident or citizen. There is no test for skills or language ability as for skilled stream migrants. There is currently a test for most people applying for Australian citizenship (see section 2.9). The family stream has grown from 31 310 visas in 1997-98 to 45 291 visas in 2005-06. However, in this period the family stream’s overall share of the Migration Program fell from 47% to 35%. The family stream in 2007-08 had 50 680 migrants.<sup>11</sup>
  - **Humanitarian Program Entrants** are chosen because they are refugees or people in need of humanitarian assistance. In 2007-08, there were 13 014 visas granted under the Humanitarian Program.<sup>12</sup>

## 2.4 Where do migrants settle in Australia?



**Source:** Department of Immigration and Citizenship, *Immigration Update 2007-08*, (forthcoming, 2009), Table 1.4 Permanent Additions by Selected Characteristics 2007-08, p.12. Note: Figures do not total 205 940 exactly due to some migrants not stating their place of intended settlement; percentages has been rounded to the nearest percent.



## 2.5 What are the impacts of migration?

### Economy

Migrants contribute to the economic development of Australia in many ways, such as: filling skill shortages; putting a demand on goods and services; investing in the Australian economy; and fostering international trade through knowledge of overseas markets, business networks, cultural practices and languages other than English.

- Migration raises average incomes and increases the scale of the economy generating wealth and employment for all Australians. Economic modelling done by Access Economics estimates that under the 2007-08 Migration Program, migrants would add \$610 million to the budget surplus in the first year, and \$1.5 billion in 2028.<sup>13</sup>
- Australia's multi-lingual, multicultural workforce can increase productivity and help businesses gain a competitive advantage.

For more information see K Carrington, A McIntosh and J Walmsley, *The Social Costs and Benefits of Migration into Australia*, University of New England, (2007) at: <http://www.immi.gov.au/media/publications/research/social-costs-benefits/index.htm>.

Or visit the Diversity Council Australia's (DCA) website at: <http://www.dca.org.au> for more information.

### Employment

Contrary to some opinions, research shows that immigration does not cause higher unemployment. In fact, migrants create jobs by increasing demand for goods and services. Research also shows that the ability of migrants to participate in the workforce increases the longer they live in Australia.

- In August 2007, the unemployment rate for all people born overseas was 4.3% compared with 4.0% for those born in Australia.<sup>14</sup> Immediately after their arrival the unemployment rate of new migrants is higher than the Australian average. However, their unemployment rate falls significantly over time. Long established migrants (23 year residence or more) have lower rates of unemployment than the Australian-born population (4.2 % compared with 6%).<sup>15</sup>
- Research also suggests that the success with which new migrants find jobs is also related to their proficiency in English, age, skill level and qualifications.<sup>16</sup>
- 60% of recent migrants arrive in Australia with a post-school qualification. However only 34% of these recent migrants have their qualification recognised in Australia.<sup>17</sup>

### Welfare system

- Migrants must have lived in Australia as a permanent resident for at least two years before they can access most social security payments, including unemployment assistance, sickness benefits and student allowances.<sup>18</sup>
- Some family migrants must have an Assurance of Support lodged for them. This is a legal commitment to repay the Australian Government certain welfare payments paid to migrants during their Assurance of Support Period and is usually, but not necessarily, lodged by a sponsor.<sup>19</sup>
- Most new migrants are not eligible for age or disability pensions until 10 years after their arrival in Australia.<sup>20</sup>

### Population

Since Federation, natural population increase (the number of births minus the number of deaths) has generally contributed more to Australia's annual population growth than migration. However, with declining fertility and an ageing population, this is likely to change over the next few decades. Immigration will become a more important influence on population growth or decline.

In recent years, there has been much debate about the need for a population policy and the role of migration in such a policy. Australia's population is an ageing one. This demographic shift has important long-term implications for Australia's future economic growth and overall living standards. Research suggests that migration can help counter some of the negative effects of an ageing population by adding to the population of the labour force.<sup>21</sup>

## Environment

Concern has grown in recent years regarding the impacts of population growth on the natural environment. Critics of current levels of migration argue that Australia does not have the 'carrying capacity' for a larger population. Others argue that Australia's environmental problems would not disappear with a smaller population because environmental damage is caused by other factors such as wasteful consumption patterns and poor management of natural resources.<sup>22</sup>

## Crime

Current research shows no evidence of a causal connection between crime and ethnicity: some overseas-born groups have lower crime rates and some have higher crime rates than the Australian-born population. This does not mean that crime is linked to ethnicity. Overall, the crime rate of the overseas born population has been lower than that of the Australian born population.<sup>23</sup> Factors such as unemployment, education, socio-economic disadvantage and lack of access to services have more bearing than ethnicity on crime rates.<sup>24</sup>

## 2.6 How diverse are Australians?

Many years of migration from a range of countries has made Australia culturally diverse.

### Overseas-born

- In the 2006 Census, approximately 22% of Australia's population stated that they were born overseas. The top five places of birth of those born overseas were England (4.3%), New Zealand (2%), China (1%), Italy (1%) and Vietnam (0.8%).<sup>25</sup>
- In the 2006 Census, Western Australia had the highest proportion of residents born overseas (27.14%). New South Wales and Victoria have almost equal proportions of overseas-born people (23.76% and 23.79% respectively) followed by the ACT (21.71%) and South Australia (20.32%), Queensland (17.91%), NT (13.76%) and Tasmania (10.61%).<sup>26</sup>
- In 2007, 30% of marriages were between two people with different countries of birth.<sup>27</sup>

### Ancestry

- In 2006, there were 8 048 204 Australians who stated that one or both parents were born overseas (40% of the total population).
- In the 2006 Census, the three most common ancestries that people identified with were Australian (37.7%), English (31.6%) and Irish (9.1%).
- Other common ancestries included Scottish (7.6%), Italian (4.3%), German (4.1%), Chinese (3.4%), Greek (1.8%), Dutch (1.6%) and Indian (1.2%).<sup>28</sup>

### Language

- In 2006, 15.8% of Australians spoke a language other than English in their homes.<sup>29</sup>
- Collectively, Australians speak over 200 languages. In 2006, Italian (with 316 895 speakers) was the most popular language other than English spoken at home followed by Greek (252 226), Cantonese (244 553), Arabic (243 662) and Mandarin (220 600).<sup>30</sup>

## 2.7 How religiously diverse is Australia?

Australia has been spiritually plural for over 50 000 years given the diversity of beliefs and practices among Australia's Indigenous peoples.<sup>31</sup> With the commencement of colonisation in Australia in 1788, Anglicans, Catholics, Methodists, Congregationalists, Presbyterians, Jews and Muslims began arriving in Australia.

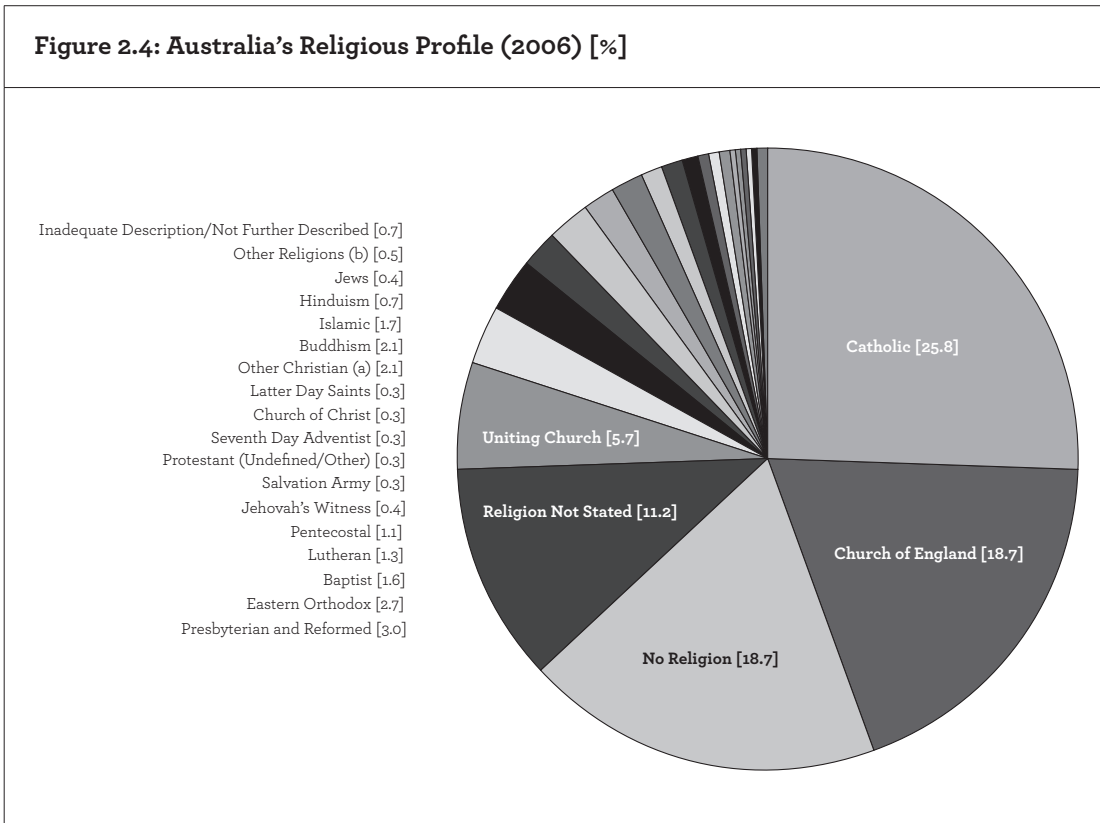
At the beginning of the 20<sup>th</sup> Century, Christianity was the predominant religion in Australia, peaking at 96.9% in 1921. Since then Christianity has progressively decreased and was 63.9% according to the 2006 Census.<sup>32</sup> In 1921, the Anglican Church was the largest religious organisation in Australia with 43.7% of the population identifying as Anglican. This percentage has progressively decreased and by the early 1990s, a greater portion of the population identified as Catholic.<sup>33</sup>

The first 20 years of Australia’s post World War II migration, which was mainly from Europe, changed the ethnic character of Australia and expanded its range of Christian churches. Post war migration expanded and diversified Catholicism with the arrival of Italian, Dutch and Polish migrants, expanded the Greek Orthodox Church with Greek migrants brought new Orthodox Churches from Eastern Europe and Protestant Churches from Northern Europe. Australia’s Jewish population also expanded with the arrival of Jewish refugees.

In 2006, Catholics were the largest religious group in Australia at 25.8%, of the total population, while Anglicans were the second largest at 18.7%. The next largest religious groups were: Uniting Church at 5.7% and Presbyterian and Reformed at 3.0%.<sup>34</sup> In 2006 Buddhists were 2.1% of Australia’s population and Muslims 1.7%. While small, these groups have progressively increased since the early 1990s, and in 2006 were greater than two small but older Christian faiths, Baptists, who were 1.6 % of the population; and Lutherans 1.3%. In 2006, Hindus at 0.7% of the population exceeded Jews at 0.4%.<sup>35</sup>

Due to changes in migration since the late 1960s, Australia now has significant and growing communities from the Buddhist, Muslim and Hindu faiths. Also due to recent immigration, Australia has small communities from the Sikh, various Chinese and Japanese religions and others. Very small groups have also formed within Australia to practice Paganism, Witchcraft and Satanism.<sup>36</sup>

Since the 1930’s, the percentage of Australians declaring ‘no religion’ has been steadily increasing. In 2006, 18.7% or almost one fifth of Australians claimed to have ‘No Religion’.<sup>37</sup>



(a) Includes Christian denominations with smaller percentages of the total population, including: Oriental Christian/Orthodox, Brethren, Assyrian Apostolic and all other Christian.

(b) Includes Australian Aboriginal religions at 0.03% and religions at 0.01% including: Chinese religions, Japanese religions, Scientology, Wicca, other nature religions, Paganism and Satanism.

Source: Australian Bureau of Statistics, *Religious Affiliation*, Catalogue No. 2068.0, (2007).

## Religious discrimination and vilification

Discrimination on the basis of religion is unlawful in a number of states and territories in Australia: the Australian Capital Territory, Western Australia, Queensland, the Northern Territory and Victoria. States and territories use various terms to describe religion under their respective anti-discrimination legislation including 'religious conviction', 'religious belief or activity', and 'religious affiliation'. South Australia's *Equal Opportunity Act 1984* does not cover religious discrimination.

Religious vilification is the incitement to form or express hatred of others on the basis of religion. It is unlawful in a number of states and territories in Australia including: Tasmania and Queensland under respective anti-discrimination legislation and in Victoria under the *Racial and Religious Tolerance Act 2001*.<sup>38</sup>

	Federal	NSW	QLD	VIC	SA	WA	ACT	TAS	NT
<b>Religious Discrimination</b>	No*	No**	Yes	Yes	No	Yes	Yes	Yes	Yes
<b>Religious Vilification/ Hatred</b>	No	No	Yes	Yes	No	No	No	Yes	No

\* The Australian Human Rights Commission can hear complaints about religious discrimination in employment.

\*\* There is protection for ethno-religious discrimination under the NSW definition of racial discrimination.

**Source:** Australian Human Rights Commission, *Guide to the Racial Discrimination Act*. At: [http://www.hreoc.gov.au/racial\\_discrimination/guide\\_to\\_rda/index.html](http://www.hreoc.gov.au/racial_discrimination/guide_to_rda/index.html), (viewed 11 September 2008).

## 2.8 What is multiculturalism?

The term 'multiculturalism' has a number of meanings, depending on the context in which it is being used.

- First, multiculturalism is often used to describe the diverse cultural make up of a society. This publication, for instance, sets out a range of facts which demonstrate the diversity and multicultural character of Australia's population.
- Second, multiculturalism refers to a set of norms that uphold the right of the individual to retain and enjoy their culture.
- Third, multiculturalism is the name given to a government policy which seeks to recognise, manage and maximise the benefits of diversity.<sup>39</sup>

Australia's multicultural policy *Multicultural Australia United in Diversity: Strategic Directions 2003-2006* expired in 2006. There is currently no federal government policy on multiculturalism. On 17 August 2007 the Race Discrimination Commissioner, Tom Calma, issued a position paper which supported multiculturalism in the three senses set out above. The paper sets out the human rights principles underlying multiculturalism and argues for the continuation of Australia's multicultural policy.

Visit: [http://www.hreoc.gov.au/racial\\_discrimination/multiculturalism/multiculturalism2007.pdf](http://www.hreoc.gov.au/racial_discrimination/multiculturalism/multiculturalism2007.pdf) to read *Multiculturalism: A Position Paper* by the Acting Race Discrimination Commissioner 2007.

## 2.9 Australian citizenship

Taking up Australian citizenship is one way migrants show their willingness to participate fully in Australia's democratic institutions and carry out their 'civic duty'. Table 2.2 shows the citizenship take-up rate for specific birthplace groups based on the 2006 census. The overall citizenship take-up rate for all overseas-born Australians eligible to become citizens was 73% at the time of the Census.

A total of 121 221 persons were conferred Australian citizenship in 2007-08. Migrants from the United Kingdom (22%), India (7%), China (6%), New Zealand (5%), South Africa (4%), Iraq (3%), and the Philippines (3%) together comprised 50% of all people conferred Australian Citizenship in 2007-08.<sup>40</sup>

### Citizenship testing

On 30 May 2007 the Australian Citizenship Amendment (Citizenship Testing) Bill was introduced into parliament. The Bill amended the *Australian Citizenship Act 2007*. The law now requires *most* permanent residents to complete the test successfully before applying for Australian citizenship. The Australian citizenship test commenced on 1 October 2007. According to the Department of Immigration and Citizenship (DIAC) the test requires those seeking Australian citizenship to have a basic understanding of English and an adequate knowledge of Australia and Australian values.<sup>41</sup>

Visit: [http://www.immi.gov.au/about/reports/annual/2006-07/html/outcome2/output2\\_3.htm](http://www.immi.gov.au/about/reports/annual/2006-07/html/outcome2/output2_3.htm) for more information about citizenship testing.

Visit: [http://www.hreoc.gov.au/legal/submissions/2007/aust\\_citizenship\\_amendment.html](http://www.hreoc.gov.au/legal/submissions/2007/aust_citizenship_amendment.html) for the Commission's Submission to the Legal and Constitutional Affairs Committee on the Australian Citizenship Amendment Bill (Citizenship Testing Bill) 2007.

<b>Table 2.2: Citizenship rates for overseas-born people resident in Australia for two years or more – 2006</b>	
<b>Country of birth</b>	<b>Citizenship rate</b>
Greece	97.2%
Vietnam	93.7%
Philippines	88.1%
Italy	80.5%
Netherlands	78.0%
South Africa	77.1%
Germany	74.4%
India	67.8%
China (excl. SARs & Taiwan)	67.0%
United Kingdom	65.9%
New Zealand	39.4%
<b>Total overseas-born</b>	<b>72.9%</b>

**Source:** Australian Bureau of Statistics, Table 14.40 Citizenship Rates, overseas-born people resident in Australia for two years or more – 2006, *Year Book Australia 2008*, Catalogue No. 1301.0.(2008), p. 460.

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# Chapter 3:

## Questions and Answers about Asylum Seekers and Refugees

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### 3.1 Asylum seekers

The terms asylum seeker and refugee are often confused. An asylum seeker is someone who says that he or she is a refugee but whose claim has not yet been assessed. A refugee is someone who has been assessed by a national government or an international agency (such as the Office of the High Commissioner for Refugees (UNHCR)) and meets the criteria set out under the *Convention Relating to the Status of Refugees 1951* (Refugee Convention).

#### Who are asylum seekers?

An asylum seeker is someone who has fled their own country and applies to the government of another country for protection as a refugee. As a signatory to the Refugee Convention, Australia must comply with its obligations and ensure that all those who make claims for protection while in Australia have their claims assessed in accordance with the Refugee Convention. A person is a refugee the moment he or she fulfils the criteria of this Convention. When Australia grants a refugee visa it does not establish but rather confirms their refugee status under international law.<sup>1</sup>

#### How many asylum seekers are there worldwide?

At the end of 2007 there were an estimated 740 000 individuals worldwide waiting on a decision regarding their asylum claim.<sup>2</sup>

Many asylum seekers make refugee applications in neighbouring countries, while some apply in countries further afield. As mainland Australia shares no land border with any other country and is far from most major conflicts, relatively few people seek asylum here compared to the United States and Europe. For example, in 2007 about 6303 people sought asylum in Australia.<sup>3,4</sup> This compares with 50 700 applications in the United States, 45 600 in South Africa and 36 400 in Sweden.<sup>5</sup> In terms of the number of refugee visas granted, Ethiopia recognised the largest number of their asylum applicants as refugees (19 896), followed by the United States with 17 979, Malaysia with 14 156 and France with 12 928.<sup>6</sup>

### 3.2 Refugees

#### Who is a refugee?

The Refugee Convention and its 1967 Protocol are the bases of modern refugee protection. The Refugee Convention defines who is and who is not a refugee and sets out the basic rights which states should guarantee to refugees. Australia is one of 146 signatories to the Refugee Convention. According to the Convention, a refugee is someone who is outside their own country and cannot return due to a well-founded fear of persecution because of their:

- race
- religion
- nationality
- membership of a particular social group
- or
- political opinion.<sup>7</sup>

A person becomes a refugee under international law once he or she crosses an international border and is assessed as meeting the definition of a refugee, either by a national government or an international agency such as the UNHCR.<sup>8</sup>

In popular use, the term refugee is often interpreted more broadly than its legal definition, to include all people who flee their homes seeking refuge from harm. There are many circumstances which could force someone to flee to safety, including war or civil strife, domestic violence, poverty and natural or man-made disasters. However, the Refugee Convention only recognises people as refugees if they are displaced from their home country because of persecution (or a well founded fear of persecution) on the basis of their race, religion, nationality and their membership of a particular social group or political opinion.

### **How many refugees are there worldwide?**

At the end of 2007, there were roughly 11.4 million refugees around the world that were under the responsibility of UNHCR.<sup>9</sup> This is the largest number of refugees seen in the past six years and continues the upward trend started in 2006.<sup>10</sup>

At the end of 2007, the Asia Pacific Region had 27.6% of the 11.4 million refugees under the mandate of UNHCR. The Middle East and North Africa region had 27.4%; the rest of Africa had 23.5%, followed by Europe 16.3% and the Americas 5.2%.<sup>11</sup>

In 2007, Pakistan hosted the largest number of refugees and people in refugee-like situations with over 2 million residing in that country, followed by Syria (over 1.8 million) Iran (approximately 964 000).<sup>12</sup> In 2007 the largest country of origin for refugees was Afghanistan (3.1 million), with Iraq as the next largest (2.3 million), followed by Colombia, Sudan, Somalia and the Burundi.<sup>13</sup>

Complete data of the age and gender makeup of the refugee population is not available. The data available showed that roughly half of the population of concern were female.<sup>14</sup> About 44% of the population of concern, for which data is available, were children under the age of 18 and about 10% were under the age of five.<sup>15</sup>

### **What are the responsibilities of the UNHCR?**

The UNHCR was created by the United Nations General Assembly in 1950 and became operational in 1951. Its original (three year) mandate was to protect the interests of the remaining World War II refugees in the countries where they had sought asylum. However, the problem of displacement did not disappear after World War II and, in fact, became a persistent worldwide phenomenon.

The UNHCR leads and co-ordinates international action to protect refugees worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It aims to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily (where possible), integrate locally in a host community or to resettle in a third country.

One of the key principles set out under the Refugee Convention is that refugees should not be returned to places where their lives or their freedom would be threatened. The UNHCR identify their preferred durable solutions for refugees as:

- the voluntary return to their country of origin in conditions of safety and dignity
- the local integration into a country of asylum if a safe return to the country of origin is not possible
- resettlement into a third country if neither of the first two options are suitable or possible.

For over 50 years, the agency has provided assistance to an estimated 50 million people. Today, the UNHCR operates in more than 110 countries and continues to help 32.9 million persons.

### **Who are environmental refugees?**

People displaced due to environmental factors, including climate change, do not fit the international legal definition of 'refugee', which requires individuals already outside their country of origin to show that they have a well-founded fear of being persecuted because of their race, religion, nationality political opinion or membership of a particular social group.<sup>16</sup>

Environmental refugees are classified as people who cannot sustain their livelihood and have to leave their 'traditional habitats' due to drought, soil erosion, desertification, deforestation, depletion of natural resources, climate change and other environmental problems. This also includes associated problems of population pressures and profound poverty.<sup>17</sup> Environmental refugees can include people who are internally displaced and therefore do not necessarily leave their country.

### How do refugees differ from migrants?

Refugees are not in the same situation as migrants, although the definitions of the two groups are often confused. Migrants *choose* when to leave their country, where they go and when they return. Refugees *flee* their country for their own safety and cannot return unless the situation that forced them to leave improves. Migrants, however, may still be a vulnerable group who face many challenges while travelling to, and settling in, a new country. Refugees and migrants are fundamentally different and are treated differently under international law.

## 3.3 What is Australia's policy on refugees?

Under its Humanitarian Program, Australia accepts a number of people from various regions. Each year the federal government sets a quota of places for people to come to Australia.

Through this program the Department of Immigration and Citizenship (DIAC) aims to:

- assist people in humanitarian need overseas for whom resettlement in another country is the only available option
- comply with Australia's international obligations onshore under the Refugee Convention.

This program has two main parts: off-shore resettlement and on-shore protection.

### Off-shore resettlement

The off-shore resettlement program is for refugees and other 'humanitarian entrants' who apply for a visa from outside Australia. There are two kinds of visas which can be granted under the off-shore resettlement program:

- **Refugee Visas:** for people outside their home country who satisfy the Refugee Convention definition of 'refugee' and who are in need of resettlement because they cannot return to their own country or stay where they are.<sup>18</sup>
- **Special Humanitarian Program Visas:** for people outside their home country who have experienced substantial discrimination amounting to a gross violation of human rights in their home country. A proposer, who is an Australian citizen, permanent resident, or eligible New Zealand citizen, or an organisation that is based in Australia, must support such an application for entry.<sup>19</sup>

### Did you know?

A person can apply to Australia for a humanitarian visa while they are in another country or while they are in Australia.

### On-shore protection

People can seek to be recognised as refugees once they are already in Australia by applying for a 'Protection Visa' (PV). To be granted a Protection Visa, asylum seekers must satisfy the Refugee Convention definition of 'refugee'.<sup>20</sup>

Australia is only obliged to protect refugees if:

- the applicant has a well founded fear of persecution on grounds covered by the Convention
- the applicant has not committed war crimes or serious non-political crimes
- the applicant does not have effective protection in another country (eg. through citizenship or some other right to enter and remain safe in that country).<sup>21</sup>

**Permanent Protection Visas (PPV):** This visa is for people who arrive in Australia and are found to be refugees that Australia is obliged to protect. If granted, the Permanent Protection Visa allows the applicant to become a permanent resident of Australia and gives them the same rights as other permanent residents, including being able to apply for Australian Citizenship. Applicants who do not have a valid visa may receive a bridging visa upon lodging a PPV application which allows the applicant to remain lawfully in the community until the PPV application is finalised. Some bridging visas allow the applicant to work in Australia, while others do not have work rights attached.<sup>22</sup> Some PPV applicants are also eligible for financial assistance for basic food, accommodation and health care while their applications are being processed.<sup>23</sup>

### 3.4 How many refugees come to Australia?

Each year, the Australian Government makes a number of places available for use under the Humanitarian Program, including both off-shore and on-shore visas. The system is fairly flexible as places that are not used in the previous year can be carried forward and, if there is need, places in the following year can be used in the current year.<sup>24</sup> Up until 2004-05 the quota was set at around 12 000 visas per annum. This was increased to 13 000 in the 2004-05 program year and this higher quota has been maintained for the 2005-06, 2006-07 and 2007-08 program years.

The 2008-09 Humanitarian Program was increased to 13 500, with the additional 500 places set aside for Iraqi refugees in recognition of their critical resettlement needs.

In 2007-08 a total of 13 014 visas were granted under the Humanitarian Program.<sup>25</sup> In 2008-09, offshore visas of the Humanitarian Program are planned to be evenly split between three regional areas: Africa, Middle East and Asia will receive 33% each with 1% as contingency.<sup>26</sup>

Category	2003-04	2004-05	2005-06	2006-07	2007-08
Refugee	4134	5511	6022	6003	6004
Special Humanitarian	8927 <sup>^</sup>	6755 <sup>+</sup>	6836	5275	5026
Onshore Protection	788	895	1272	1701	1900
Temporary Humanitarian Concern	2	17	14	38	84
<b>Total</b>	<b>13 851</b>	<b>13 178</b>	<b>14 144</b>	<b>13 017</b>	<b>13 014</b>

<sup>^</sup> This figure includes 1228 grants to the East Timorese on-shore.

<sup>+</sup> This figure includes 148 grants to East Timorese and 22 others on-shore.

**Source:** Department of Immigration and Citizenship, *Australia's Refugee and Humanitarian Programme*, Fact Sheet 60. At: <http://www.immi.gov.au/media/fact-sheets/60refugee.htm>, (viewed 15 September 2008).

### 3.5 Where do refugees come from?

In 2007-08, a total of 13 014 people were granted visas under the Humanitarian Program, including 10 799 off-shore and 2215 on-shore applicants.<sup>27</sup> The off-shore visas granted in 2007-08 were mainly targeted at three geographical areas: Middle East and South West Asia (35.4%), including Iraq and Afghanistan; Asia (33.7%), including Burma/Myanmar and Sri Lanka; and Africa (30.5%), including Sudan, Liberia and the Democratic Republic of the Congo.<sup>28</sup>



**Table 3.2: Off-shore Resettlement Program, visas granted by region 1999-2000 to 2005-06**

Region	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Middle East & SW Asia	2208	2155	2743	4701*	2867 <sup>^</sup>	3174	4335	3126	3807
Africa	1736	2032	2801	5616	8353	8486	7100	5695	3291
Asia	113	316	189	181 <sup>#</sup>	221	415	1260	2315	3636
Europe	3424	3462	2709	1158	354	20	55	50	59
Americas	21	27	16	0	7	1	8	0	6
<b>Total</b>	<b>7502</b>	<b>7992</b>	<b>8458</b>	<b>11 656</b>	<b>11 802</b>	<b>12 096</b>	<b>12 758</b>	<b>11 186</b>	<b>10 799</b>

\* Includes 311 grants to mainly Afghan and Iraqis in the Offshore Processing Centres in Papua New Guinea and Nauru.

# Includes 26 grants to out of region cases.

<sup>^</sup> Includes 90 grants to mainly Afghanis and Iraqis in the Offshore Processing Centres in Papua New Guinea and Nauru.

**Source:** Department of Immigration and Citizenship, *Australia's Refugee and Humanitarian Programme*, Fact Sheet 60.

At: <http://www.immi.gov.au/media/fact-sheets/60refugee.htm>, (viewed 15 September 2008).

### 3.6 What happens to asylum seekers in Australia?

Asylum seekers in Australia are treated differently according to whether they entered Australia as 'authorised' or 'unauthorised' arrivals.

**'Authorised' arrivals** enter Australia with a valid visa (such as a tourist or student visa). Authorised arrivals can apply for a Permanent Protection Visa (PPV). An applicant for a PPV who meets the relevant eligibility requirements will be granted a bridging visa while their protection claims are being assessed. Whether they are granted permission to work depends on their immigration status at the time of making their PPV application as well as the operation of other criteria. Some PPV applicants are also eligible to receive financial help from the Government if they cannot meet their basic needs for food, accommodation and health care. Authorised arrivals who are not found to be refugees according to Australian migration law may be detained until they are removed from the country.

**'Unauthorised' arrivals** enter Australia without a valid visa, by boat or by air. In July 2008 the federal government announced that Australia will only detain unauthorised arrivals for identity, health and security checks. Once they have passed these checks, they may be issued with a bridging visa so that they can live in the community while their refugee applications are being decided. Unauthorised arrivals who are found not to be refugees under Australian migration law may be removed from the country.

#### Who decides refugee applications in Australia?

Once in Australia, an asylum seeker applies for refugee status to DIAC. When an application is made an officer from DIAC, acting as a delegate of the Minister for Immigration and Citizenship, decides if the applicant engages Australia's obligations under the Refugee Convention. This is done by assessing individual claims against the definition of a refugee set out in the Refugee Convention and domestic legislation. A decision on all initial refugee applications should be made within three months<sup>29</sup> of the application being lodged.<sup>30</sup> The applicant must also meet certain health and character requirements in order to be granted a visa.<sup>31</sup> If the application is successful, the applicant is granted a Permanent Protection Visa.

If an application by a person in Australia is refused, that person can seek a review of the decision from an independent tribunal. They can either apply to the Refugee Review Tribunal (RRT) or the Administrative Appeals Tribunal (AAT) depending on the basis for refusal.<sup>32</sup> These appeals must also be processed within three months of them being lodged.<sup>33</sup>

### Did you know?

**A decision should be made within three months on all initial refugee applications made by asylum seekers being held in immigration detention in Australia.**

The AAT provides independent merits review of:

- a visa refusal decision based on section 501 character grounds, or
- a protection visa refusal decision based on Article 1F or Article 33(2) of the Refugee Convention (see section 3.7).

The AAT hearing is based on an adversarial framework similar to that of a court proceeding where each party is able to present his or her case.

The RRT is an independent body established under the *Migration Act 1958* (Cth) to review protection visa applications. The RRT considers individual circumstances and claims in each case, and make a fresh objective assessment of the merits of the case. The RRT will take into account any new developments or claims which may have emerged since the case was last examined. The tribunal hearing, unlike a court or the AAT, is informal and non-adversarial.

Applicants rejected by the RRT (and who have no other legal reason to be in Australia) have 28 days to depart Australia. If they stay beyond this 28-day period, they may be removed from Australia.<sup>34</sup>

The Minister has a non-compellable power to intervene after an unfavourable RRT or AAT decision relating to a protection visa to substitute a more favourable decision to the applicant if the Minister believes it is in the public interest.<sup>35</sup> Applicants may also seek judicial review of an unfavourable RRT or AAT decision in limited circumstances.

### **What happens to people who do not meet the definition of refugee but are in need of protection?**

There are some people who are found not to be refugees by Australia's refugee status determination system, but who otherwise may face significant human rights abuses if returned to their countries. For example, they may not meet one of the grounds for persecution under the Refugee Convention, but might face torture or death on return.

Australia has obligations under the *International Covenant on Civil and Political Rights*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment* and the *Convention on the Rights of the Child* not to return people who risk these significant human rights violations. Similarly, Australia has international obligations not to return a person if they are stateless (no state considers them to be a national of their country).

Some countries provide a formal system of 'complementary' or 'subsidiary' protection' for these people.<sup>36</sup> However, in Australia currently the only avenue of protection is to apply to the Minister for Immigration and Citizenship to exercise his/her personal discretion under section 417 of the *Migration Act 1958* (Cth).

## **3.7 Why are refugees allowed to stay in Australia?**

Every country that has adopted the Refugee Convention, including Australia, makes a commitment to protect the rights of refugees. The crucial part of this commitment is never to return a refugee to a country where he or she has reason to fear persecution.

Article 33 of the Refugee Convention is titled 'Prohibition of expulsion or return ('refoulement')' and says:

1. *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.*
2. *The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.*<sup>37</sup>

As a signatory to the Refugee Convention, Australia is obliged to provide protection to those people, regardless of whether they entered Australia lawfully or unlawfully. This means that Australia must give authorised and unauthorised arrivals the chance to prove whether or not they are refugees before removing them from the country. Australian law requires that people who have not succeeded in their claim for refugee protection and who have no lawful basis to remain in Australia, be removed from Australia as soon as practicable.

### 3.8 What settlement services does Australia provide to refugees?

Humanitarian entrants like migrants have access to the Adult Migrant Education Program (AMEP). There are also some programs administered by DIAC specifically for refugees and other humanitarian entrants.

The **Australian Cultural Orientation Program** (ACOP): is available to all refugee and special humanitarian entrants over five years of age and is delivered offshore to provide an overview of Australia, including: government, geography and climate, cultural adjustment, travel to Australia, settling in, health care, education, finding a job, money management, housing, transport, Australian laws and the role of police.

The **Integrated Humanitarian Settlement Strategy** (IHSS): provides initial settlement assistance for humanitarian entrants for up to 12 months after arrival, including: information and orientation assistance, assistance in finding accommodation, a package of goods, assistance to access services and become a part of the local community and short-term torture and trauma counselling. Some asylum seekers that are granted an Onshore Protection Visa have limited eligibility to IHSS services.

The **Settlement Grants Program** (SGP): provides organisations with funding to provide settlement support to eligible migrants and humanitarian entrants, for up to five years after arrival. It aims to deliver services which help new arrivals to become self reliant and participate equitably in Australian society as soon as possible after arrival.

Other programs include:

- increased assistance with rental, utilities and transport costs in the first month after arrival
- Complex Case Support (CCS) services which deliver specialised and intensive case management to recently arrived humanitarian entrants where pre-migration experiences, such as severe torture and trauma, serious medical conditions and/or crisis events after arrival in Australia, present significant barriers to successful settlement
- an additional one-off income support payment for humanitarian entrants on-arrival (through Centrelink).

### 3.9 Past policies in Australia

#### What was the 'Tampa' issue?

In August 2001, the Norwegian cargo ship *MV Tampa* rescued 433 mostly Afghani and Iraqi asylum seekers from a sinking boat in the Indian Ocean. The Howard Government refused permission for the *Tampa* to enter Australian waters and allow its passengers to get off on nearby Christmas Island, an Australian Territory. Despite the government's warning, the *Tampa* entered Australian waters and the ship was boarded by Australian Special Air Services (SAS) troops. The passengers were transferred from the *Tampa* to an Australian Navy ship and taken to Nauru. The government of Nauru agreed to house the asylum seekers in return for economic aid from Australia.

The Howard Government's refusal to allow asylum seekers on the *Tampa* to land on Australian territory was later challenged in the Federal Court, which upheld the right of the government to act as it did.<sup>38</sup> The Tampa incident was a major catalyst for debate in Australia regarding unauthorised boat arrivals and for the implementation of the 'Pacific Solution'.

### **What was the 'Pacific Solution'?**

The 'Pacific Solution' or 'Pacific Strategy' aimed to prevent unauthorised boat arrivals from reaching the Australian mainland and making refugee applications. The Howard Government developed this strategy in September 2001 in response to the *Tampa* issue. It involved removing or 'excising' certain parts of Australian territory through amendments to the Migration Act, including Ashmore Reef and Cartier Island, Christmas Island and Cocos (Keeling) Islands, from Australia's 'migration zone'. This means people landing in these places could not access the Australian refugee determination system. Instead, they were transferred to a 'declared country', such as the Pacific Island nation of Nauru or Manus Province in Papua New Guinea, while their applications were being assessed.

In March 2008 the Rudd Government ended the Pacific Solution and the last remaining asylum seekers on Nauru were settled in Australia. Although asylum seekers are no longer detained in Papua New Guinea or Nauru, the legislation which excises certain parts of Australia remains. Unauthorised arrivals in these places, for example Christmas Island, cannot apply for a visa unless authorised by the Minister for Immigration and Citizenship. Their claims for protection are not subject to the same processes and review mechanisms as asylum seekers who arrive on mainland Australia. At the date of publication, the Rudd Government had also announced some measures to improve their access to legal assistance and review.

### **What were Temporary Protection Visas (TPV's)**

Temporary Protection Visas were introduced by the Howard Government to deter unauthorised arrivals. Under the policy, all unauthorised arrivals who applied for asylum and who were found to be refugees were granted three year TPV's only. In contrast, asylum seekers who applied for protection while on a valid visa in Australia were granted Permanent Protection Visas (PPV's). In addition to their temporary nature, TPV's also restricted the rights of TPV holders to family reunion and their right of return if they left Australia.

On 9 August 2008 Temporary Protection Visas (TPVs) were officially abolished. All initial applicants for a protection visa who are found to be a refugee now receive a Permanent Protection Visa. A number of Temporary Humanitarian Visas (THVs) were also abolished in August 2008. These visas included the Subclass 451 - Secondary Movement Relocation (Temporary) and Subclass 447 - Secondary Movement Offshore Entry (Temporary) visas. Former TPV and THV holders who were still in Australia as of 9 August 2008 have access to a permanent visa arrangement with the same benefits and entitlements of the PPV.

Visit: [http://www.aph.gov.au/library/pubs/online/Refugees\\_contents.htm](http://www.aph.gov.au/library/pubs/online/Refugees_contents.htm) for more information about the history of refugee policy in Australia.

## **3.10 What is immigration detention?**

Under the previous immigration detention policy, 'unlawful non-citizens' had to be detained until they were granted a visa (pursuant to a refugee claim or some other category) or were removed from the country. An 'unlawful non-citizen' is a person without a valid visa in Australia. People become 'unlawful non-citizens' if:

- they enter Australia without a valid visa (i.e. if they are 'unauthorised arrivals')
- they enter Australia with a valid visa but then stay past the visa's expiry date (i.e. they 'overstay' their visa)
- they break the conditions of their visa (for example, by working when the visa does not allow it)
- or
- if their visa has been cancelled.<sup>39</sup>

The law requiring immigration detention for 'unlawful non-citizens' was introduced in 1992 and was then expanded in 1994.<sup>40</sup>

As at 12 September 2008, there were a total of 274 people in detention:

- 147 were detained because they overstayed their visa
- 67 were detained because their visa was cancelled
- six were unauthorised boat arrivals
- 40 were unauthorised air arrivals
- three were illegal foreign fishers
- 11 were detained for other reasons e.g. ship deserters and stowaways.<sup>41</sup>

### What was the Palmer Report?

The Palmer Report was a result of an Inquiry held in July 2005, to determine how an Australian resident, Cornelia Rau, came to be held for 10 months in Immigration Detention, and an Australian citizen, Vivian Alvarez, came to be deported to the Philippines.

The report highlighted problems concerning the provision of mental health services to detainees, as well as identifying structural problems within DIAC.

**Source:** Palmer, M., Inquiry into the Circumstances of the Detention of Cornelia Rau, 2005.  
At: <http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf> Immigration.

Of the 274 people in immigration detention, 46 of these are in the process of seeking asylum in Australia.<sup>42</sup>

In July 2008, the Minister for Immigration and Citizenship announced changes to the mandatory immigration detention system.<sup>43</sup> The Minister indicated that immigration detention centres will only be used as a last resort and for the shortest possible period of time. Unauthorised arrivals will be detained only until they have passed identity, health and security checks.

### Children in immigration detention

Between 1 July 1999 and 30 June 2003, 2184 children arrived in Australia without a valid visa and sought asylum – all these children were held in immigration detention while their refugee status was being determined.

Between 2001-04, the Australian Human Rights Commission conducted a National Inquiry into Children in Immigration Detention to investigate the human rights of children in immigration detention. The report on the Inquiry is entitled *A last resort?*

Visit: [http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/index.html](http://www.humanrights.gov.au/human_rights/children_detention_report/index.html) to read the report.

### National Inquiry into Children in Immigration Detention

From November 2001 to April 2004, the Commission conducted a National Inquiry into Children in Immigration Detention to investigate whether Australia's detention laws complied with international law. The report of the *Inquiry into Children in Immigration Detention, A last resort?* was tabled in Federal Parliament in May 2004.<sup>44</sup>

The Inquiry found that:

- Australia's immigration detention policy is inconsistent with the *Convention on the Rights of the Child*.<sup>45</sup> In particular, Australia's mandatory immigration detention system failed to ensure a child's right to be detained as a measure of last resort and for the shortest appropriate period of time
- children in immigration detention for long periods of time are at high risk of serious mental harm
- long-term detention undermines a child's ability to enjoy a variety of other important rights.

Visit: [http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/index.htm](http://www.humanrights.gov.au/human_rights/children_detention_report/report/index.htm) to read *A last resort? The National Inquiry into Children in Immigration Detention*.

### Recent developments for children and families in detention

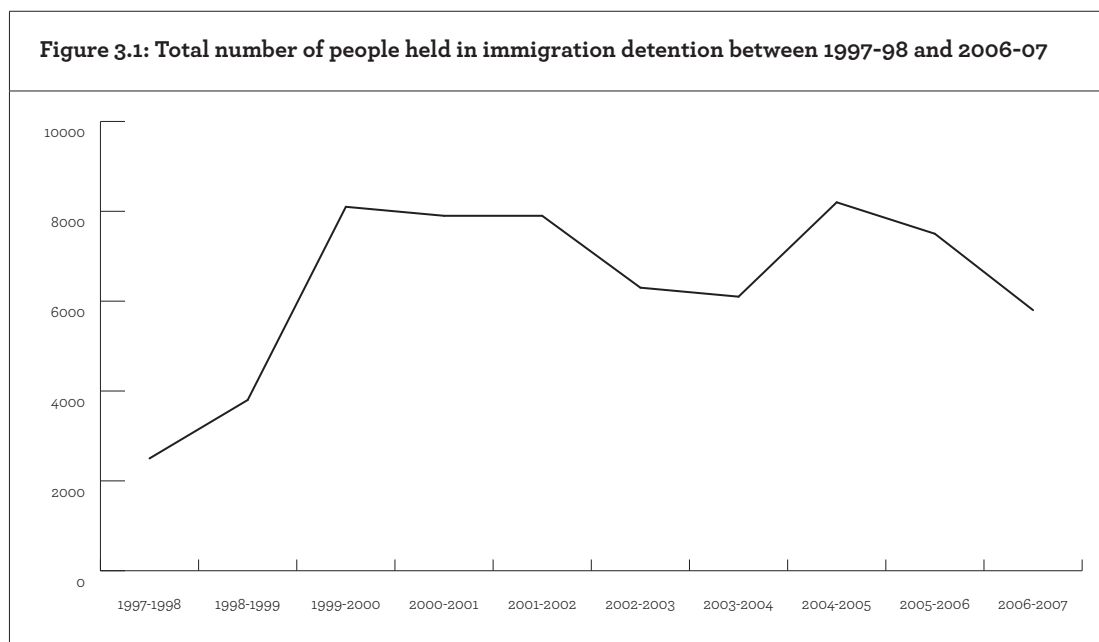
Since the tabling of *A last resort?*, the *Migration Act* was amended by the *Migration Amendment (Detention Arrangements) Act 2005* (Cth). Those amendments:

- affirm the principle that children shall only be detained as a last resort, however, this principle is not directly enforceable
- confer upon the Minister a new power (which is non-compellable and non-reviewable) to grant a visa to a person in immigration detention where the Minister is satisfied that it is in the public interest to do so
- confer upon the Minister the power to specify alternative arrangements for a person in immigration detention, which will enable the Minister to allow families with children to reside in the community in a specified place (again this power is non-compellable and non-reviewable)
- confer upon the Commonwealth Ombudsman the function of reviewing the cases of people who have been in immigration detention for more than two years. While the Ombudsman is further empowered to make recommendations regarding such people (including as to the appropriateness of their ongoing detention) such recommendations will not be binding upon the Minister.

Since 29 July 2005, there have been no children held in Australian Immigration Detention Centres. However, technically children are still held in 'detention', as most children and their families without visas are detained in 'community detention' and Immigration Residential Housing at the discretion of the Minister.

### How many people are detained?

The number of people who are detained in immigration detention each year is highly variable. In the last ten years it has ranged from approximately 2700 people in 1997-98 to over 8500 people in 2004-05.<sup>46</sup> There were 5485 people detained at some time during the 2006-07 period. The maximum number of people detained on any one day in this period was 847.<sup>47</sup>



**Source:** Department of Immigration and Citizenship, *Immigration Detention*, Fact Sheet 82. At: <http://www.immi.gov.au/media/fact-sheets/82detention.htm> (viewed 12 January 2008).

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### Where are people detained?

- **Immigration Detention Centres (IDCs):** mainly used to detain people whose visas have been cancelled, who have breached their visa conditions or who have overstayed their visa, and people refused entry at Australia's international airports. These are secure facilities.
- **Immigration Residential Housing (IRH):** enables people in immigration detention to live in family-style accommodation.
- **Immigration Transit Accommodation (ITA):** This is temporary accommodation for people who are spending a short time in detention before they are returned home or transferred to other facilities. Only people considered to be a low security risk are housed in these facilities.<sup>48</sup>
- **Community Detention:** In this situation people can be detained in the community as authorised by the Minister under 'residence determinations'. People in community detention are able to live in the community at a specified address and, subject to certain conditions, can participate in community life without being accompanied or restricted. Community detention allows families with children, unaccompanied minors or people with special needs to live in the community where their needs can be better addressed, while still being available to DIAC for immigration processing purposes.

Facility	Men	Women	Children	Total
Villawood IDC	126	12	0	138
Northern IDC	3	0	0	3
Maribyrnong IDC	41	6	0	47
Perth IDC	4	0	0	4
Christmas Island IRPC	0	0	0	0
<b>Total in Immigration Detention Centres</b>	<b>174</b>	<b>18</b>	<b>0</b>	<b>192</b>
Sydney Immigration Residential Housing	13	3	2	18
Perth Immigration Residential Housing	4	2	0	6
Brisbane Immigration Transit Accommodation	6	0	0	6
Melbourne Immigration Transit Accommodation	3	0	0	3
<b>Total in IRH and ITA</b>		<b>26</b>	<b>5</b>	<b>2</b>
Community Detention <sup>i</sup>	23	9	12	44

Alternative Temporary Detention in the Community <sup>ii</sup>	2	1	0	3
Restricted on Board Vessels in Port <sup>iii</sup>	2	0	0	2
<b>Total in Community and Alternative Detention</b>	<b>25</b>	<b>10</b>	<b>12</b>	<b>47</b>
<b>Total (All Locations)</b>	<b>227</b>	<b>33</b>	<b>14</b>	<b>274</b>

i Community Detention does not require the person to be accompanied by a designated person.

ii Includes detention in the community with a designated person in private houses/ correctional facilities /watch houses/ hotels/ apartments/ foster care/ hospitals.

iii The requirement for ships' crew who visit Australian ports without an appropriate visa to remain on their vessel while it is in their port (under section 249 of the Migration Act 1958) has been enforced for each of these people.

**Source:** Department of Immigration and Citizenship, Immigration Detention Statistics Summary, 2008.

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Immigration facilities at Port Hedland are also maintained as contingency facilities on a needs basis but are not currently in use.<sup>49</sup>

### **Where do people in detention come from?**

The main nationalities of detainees held in detention in 2000-01 were Afghan, Iraqi, Iranian and Palestinian. The main nationalities of those held in 2001-02 were Afghan, Iraqi, Malay and Sri Lankan. Between 2002-03 and 2005-06, the main nationality of detainees was Indonesian, followed by Chinese, Malay and Korean.<sup>50</sup>



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