Developments in refugee law and policy: 2014 in review

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On a global level, 2014 may well be remembered as the year the number of refugees, asylum-seekers and internally displaced people exceeded 50 million people for the first time in the post–World War II era. However, in Australia 2014 will most likely be remembered as the year the boats stopped. That is not to say that boats carrying asylum seekers stopped attempting to reach Australia—rather, there were considerably fewer attempts made and those that did, were all (except one) redirected elsewhere. The Government’s contentious decision in June to return a boat carrying 157 Sri Lankan asylum seekers to India resulted in a High Court challenge (yet to be finalised), significant amendments to the Maritime Powers Act 2013, and the eventual transfer of the asylum seekers from the mainland to Nauru for processing. Though for the majority of the year, the Government’s management of what it termed ‘on-water matters’ remained under a shroud of secrecy, by September the Minister had announced that since the end of 2013, 12 boats had been returned to their countries of departure—four of which involved the use of lifeboats.

2014 may also be remembered as the year that Temporary Protection Visas (TPVs) were reintroduced. This was despite repeated disallowance motions by the main opposition parties and High Court challenges throughout the year. However, as a concession to secure support for their re-introduction, TPV holders will now be permitted to travel outside Australia in certain circumstances and asylum seekers can alternatively apply for a Safe Haven Enterprise visa (SHEV). This a five-year temporary protection visa that requires the holder to reside in regional Australia and unlike the TPV, can lead to permanent residency. The Government’s strategy of screening asylum seekers on board vessels caused significant concern amongst refugee lawyers, as did their decision to cease funding legal advice, implement a Code of Behaviour, and introduce fast-track assessment processes for some asylum seekers. However, the Government is yet to secure passage of two more Bills which will make further significant changes to the way in which Australia processes its asylum seekers.

The Government retained the number of permanent visas available under the Humanitarian Program at 13,750 during the year despite mounting calls for it to be increased. However,
by December, in another concession to secure passage of its legislation, the Minister had made a determination that will see it increase to 16,250 in 2017 and to 18,750 in 2018. In 2014, refugees began to be settled in Nauru despite concerns about its viability, and in December a new facility was opened in PNG to accommodate those persons determined to be refugees. The Australian Government also signed an MOU with Cambodia providing for the permanent (but voluntary) settlement of persons found to be refugees by the Government of Nauru. Moreover, in an effort to discourage more asylum seekers travelling to Indonesia, the Minister announced that asylum seekers who registered with UNHCR in Indonesia after 1 July 2014 would no longer be eligible for resettlement to Australia. 2014 began with the death of an asylum seeker, Reza Berati and injury of at least 70 others at the Manus Island Regional Processing Centre in PNG. By the end of the year, a Parliamentary Senate Committee inquiring into the incident subsequently found that the events of February were ‘eminently foreseeable and may have been prevented if transferees had been given a clear pathway for the assessment of their asylum claims’. Later in the year, another asylum seeker, Hamid Kehazaei, died after developing septicaemia at the same processing centre. The UN Committee Against Torture subsequently expressed concern at Australia’s policy of transferring asylum seekers to the regional processing centres ‘despite reports on the harsh conditions prevailing in these centres, including mandatory detention, including for children; overcrowding, inadequate health care; and even allegations of sexual abuse and ill-treatment’.

In 2014, the Australian Human Rights Commission conducted a National Inquiry into children in detention, the report of which has not yet been made publicly available by the Government. Though at the end of November, there were more than 500 children detained in an onshore facility and more than 150 on Nauru, by year’s end, the Government had transferred all children residing on Christmas Island to facilities in Darwin as part of its commitment with cross-benchers to secure passage of its legislation. Asylum seekers continued to self-harm and hunger strike, with many continuing to suffer from poor mental health. There were also serious allegations that asylum seekers suffered physical harm throughout the year and the Government continues to face substantial compensation claims including from almost 10,000 asylum seekers that had their personal information inadvertently exposed on the Department’s website earlier in the year. Though this year saw the Government achieve many of its policy objectives and thus, many of its election commitments, it must be recognized that the problem of refugees is clearly not diminishing nor is it a problem that will be easily or quickly resolved.

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