

Pacific Solution

The Most Controversial Immigration Policy of the 2000s

1. Introduction

During the eleven years of Prime Minister John Howard's being in office, the foreign relations policies of the government shifted from the previous Asia-friendly approach back to the traditional United States- and United Kingdom-centred attitude. This change is also reflected in the Pacific Solution, which was one of the strictest governmental immigration policies known to the western cultural hemisphere in the post-millennial era. The policy which was in force between 2001 and 2007 excised thousands of islands from the migration zone of Australia, and it provided the government the possibility to remove certain asylum seekers from the territories of the country to third countries during the process of determining the arrivals' status.

2. Aims

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

The paper is divided into four parts. The first section will examine the historical and social background of the implementation of the Pacific Solution acts. In the second, I shall take a closer look at the acts comprising the policy, and I shall include and explain the main objectives of the Pacific Solution as well. The third part will focus on the criticism of the Pacific Solution, including the issues of its adherence to international law, as well as the interpretation of the statistical data related to the number of unlawful non-citizens arriving in the country. In the conclusion, besides drawing conclusions from the previous sections of the paper, I shall also give a brief overview of the current state of affairs.

3. Background

3.1 Historical background to strict immigration policies from the 19th century up to the implementation of the Pacific Solution

3.1.1 From the Gold Rush era to the 1970s

While Australia has been known as a destination area of “immigration” for circa 50,000 years (cf. arrival of aborigines), the modern history of immigration – subsequent to British colonisation - began in the 19th century during the Gold rush era, when European and also numerous Asian immigrants arrived in the country. Colonial legislators reacted without delay – for example, the Victorian Parliament passed the Act to Make Provisions for Certain Immigrants in 1854, which limited the number of Chinese passengers who could be brought into the country to one person per every tons of the ship cargo. Acts similar to the one introduced by the Victorian colony later became the foundation stones of the 1901 Immigration Restriction Act (also known as the starting point of the White Australia Policy). Schloenhardt suggests that in fact this desire of the separate colonies of the Australian continent to have a central immigration controlling agency was one of the main reasons to create the Federation in 1901¹, which is also evidenced by the fact that it was one of the first acts (following the similar Pacific Island Labourers Act) to be passed by the centralised Parliament of Australia, the supreme legislative body of the newly founded Federation. The legislators implemented a “subtle” approach to forcing immigrants back, as the law was not openly discriminatory towards Asian labourers – it did not speak of nations or races – but, upon the proposal of the first Prime Minister of Australia, Edmund Barton, it introduced the ill-famed dictation test – a “sleight of hand” to exclude non-whites from immigration –, whose results could later be easily manipulated in a way that it would satisfy the needs of the government. Its significance will be noticeable in the similar “work-around” approach which is apparent in the legislation of the Pacific Solution acts as well.

Following the Second World War, politicians started to see the necessity of a more encouraging immigration programme. As it is suggested by the famous slogan “populate or perish” of Labor Party Minister of Immigration Arthur Calwell, this expansion was necessary not only to meet the workforce needs of the country, but also because immigration was seen

¹ Andreas Schloenhardt, *Migrant Smuggling: Illegal Immigration and Organised Crime in Australia and the Asia Pacific Region* (The Netherlands: Martinus Nijhoff Publishers, 2003), 54.

as a key factor in improving a defensive capability after the demonstration of Australia's military vulnerability during the war.² While the government's aim was to attract primarily British and Nordic immigrants, it soon became apparent that this goal is not feasible – mostly due to the prosperity of the source countries. Thus the major source of immigration became the large number of Displaced Persons residing in European DP camps, 170 000 of whom were selected and shipped to Australia, which still amounts to the largest number of non-British arrivals in a short period of time, which intake basically laid the foundations for a multicultural Australia³, even when governmental policies still favoured rapid assimilation – meaning all immigrants were to adopt to the English cultural heritage and to leave their own culture behind in order that a monocultural nation could come into existence.

Throughout the decades following the Second World War, there was a continuous shift from the assimilation policy to one whose aim was to incorporate other cultural groups, and finally the process resulted in a multicultural society, in which everyone could and can cherish his or her own culture as long as adhering to the laws of the country. Perhaps the most significant milestone of this shift was the public policy introduced by the first Whitlam Labor Government, which rendered multiculturalism the basis of ethnic affairs policies.⁴

3.1.2 From the 1970s to the Pacific Solution

The phenomenon of asylum seekers appeared in the 1970s, when the first boats carrying people from Vietnam arrived at the shores of Australia. In the light of the recent past, it certainly seems surprising, but there was no opposition to this first wave of boat people, as they were considered legitimate refugees, ones that were escaping from the communist regime.⁵ The sympathetic approach of the public was also reinforced by the fact that Australia, supporting the United States, was a belligerent on the Anti-Communist side. The waves following the first one, however, soon reactivated the ever-present fears that one day Asian masses would swarm the continent.⁶ As a response to the new influx of asylum seekers, Gerry Hand, who served as the Minister for Immigration, Local Government and Ethnic

² Catherine Bohm, Moira Coombs, and Michael Klapdor, *Australian citizenship: a chronology of major developments in policy and law*, 2009, 5, http://www.citizenship.gov.au/_pdf/cit_chron_policy_law.pdf.

³ James Jupp, *From White Australia to Woomera* (United Kingdom: Cambridge University Press, 2002), 12-13.

⁴ Mark Lopez, *The Politics Of The Origins Of Multiculturalism: Lobbying And The Power Of Influence*, 4, http://www.apa.org.au/upload/2000-5A_Lopez.pdf

⁵ Janeth Phillips and Harriet Spinks, *Immigration detention in Australia*, 2, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/BoatArrivals

⁶ Jupp, *From White Australia*, 188

Affairs in Prime Minister Paul Keating's Labor Government, introduced a controversial policy that ordered the mandatory detention of the arrivals until their clearance as refugees, which policy was later enacted as the *Migration Reform Act 1992* with a bipartisan support. In an interview conducted in 2005, Gerry Hand summed up not only what he considered had served as the basis of the act, but also the often cited public opinion:

I believe it is crucial that all persons who come to Australia without prior authorisation not be released into community. Their release would undermine the Government's strategy for determining their refugee claims or entry claims. Indeed, I believe it is vital to Australia that this be prevented as far as possible. The Government is determined that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community. (The 7.30 report)

The year 1992 also saw a decrease in the immigration target figures – from 111,000 to 80,000 – and the number of occupations on the priority list was reduced from eleven to four.⁷ Stricter policies, however, were not successful, as it is evidenced by the growth in the number of unauthorised arrivals. In contrast to the 80s and the early 90s, when the number of boat people was relatively low, in the second part of the decade, the number of arrivals from the Middle East and central Asia began to increase – primarily due to the UN sanctions on Iraq. While the majority of the refugees headed for Europe, small numbers of runaways, aided by smuggler, left for Australia through Indonesia – at the southern shores of Indonesia, they went on board and sailed towards islands such as Christmas Island.⁸ The significance of outer territories is evidenced by the fact that while the northernmost large city of Australia, Darwin, lies around 2700 air kilometres from Jakarta, Christmas Island is a mere 500 kilometres away from the capital of Indonesia.

On 24 August, 2001, one of these smuggling boats – *Palapa 1* – got stranded about 140 kilometres north of Christmas Island. When the Norwegian cargo ship *Tampa* received the distress signals of the stranded ship, it changed course and its crew transferred 433 people on board, though the cargo ship itself had facilities for only 50 people, including its own, 27-strong crew. Although the closest suitable port to the rescue site was on Christmas Island, the Immigration Department of Australia forbade the Norwegian ship to disembark the survivors there. The government sent Australian Special Forces soldiers to board the ship and instruct the captain to sail back to international waters. The captain, however, refused to follow the

⁷ Bohm, Coombs and Klapdor, *Australian Citizenship*, 14

⁸ Jupp, *From White Australia*, 193

instructions, and due to the international pressure on the government, the troops were withdrawn. Finally, after days of negotiating, the majority of the passengers were loaded onto a Royal Australian Navy vessel and were taken to camps in Nauru, and the rest were accepted by New Zealand and Ireland.

In October the same year, the sinking of an Indonesian boat (later known as SIEV-X) leading to the drowning of 353 people including many children once again drew the attention to people smugglers and illegal immigration, although a later established Senate Committee on a Certain Maritime Incident found that the Royal Australian Navy was fully committed “to the fulfilment of safety of life at sea obligations, and to meeting the humanitarian needs of those on board the intercepted vessels”⁹, thus found no government agency to be blamed for the tragedy.¹⁰

Besides the Tampa and the SIEV-X affairs, other events of the decade also strengthened the case of those in favour of increasing the severity of immigration policies. The September 11 terrorist attacks on New York and Washington, D.C. were obviously the first of these events, but the 2005 London bombings can also be considered as one of the major factors in the changing of the political climate and thus the Parliament’s rendering laws concerning immigration more rigorous. As a result of such events, immigrants were more and more considered as national security threats –the fear that stemmed in this will be discussed in detail in the next chapter.

3.2 Social background

When discussing the social background of the policy, we must take into consideration that governmental actions, including legislation, are necessarily influenced by the public opinion, therefore, it is of interest to us what may lie behind xenophobia or the fear of illegal immigrants in this context. It is of great importance to define what we mean under xenophobia before starting discussing what serve as a basis of it in the Australian political framework, especially because it is often used near-synonymously with racism in everyday language. Racism in my opinion – as well as according to the most renowned

⁹ Senate Committee, *Certain Maritime Incident* (2002), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=maritime_incident_ctte/report/index.htm.

¹⁰ The figures of the last two paragraphs are from James Jupp’s *From White Australia to Woomera*.

encyclopaedias¹¹ – is the belief in the existence of distinct races that are different in their characteristics and abilities and in that these races are in an inferiority-superiority hierarchy. On the other hand, xenophobia is simply a fear of people from other countries for their being – primarily culturally – different from what is known to the person. Based on these definitions, we can state with confidence that xenophobia is much less of a socially constructed phenomenon, and is much more likely to be innate. This, of course, does not mean that it should not be fought against, I must add.

Jupp, in his 2006 article entitled “Terrorism, Immigration and Multiculturalism” argues that albeit the changes in the demographics of the population since the 1947 census (90% British, 99% ‘white’ and overwhelmingly Christian) are dramatic, the Muslim population of the country (1.5%) was at the time lower than that of France (7.5%), Germany (3.7%) and other countries of the same or similar cultural background, and thus the country is less multicultural in religious and racial terms than many comparable others. Therefore, he suggests, such fears are unjustified and people have no cause to be alarmed.

While I am not suggesting that such fears are called for, I find Jupp’s reasoning unsatisfactory in its entirety. While the figures he used do suggest that Australia is not yet on the same level in terms of multidenomination and multiculturalism as the other countries mentioned in his paper, some tendencies shown in the 1996, 2001 and 2006 censuses are also noteworthy from this point of view (note: as of date, not all data of the 2011 census are available).

When speaking about cultural differences, which people in general primarily bear in mind when having fears about immigration, we must take into consideration the arrivals’ religion and language background, as they are better indicators of culture than the country of origin or ancestry. Australian censuses include questions related to the religion of the respondent, as well as ones concerning the language used at home, which can both be to our aid to study the question. What may increase the fear of other cultures is encountering more and more people from a different culture dressing, behaving and speaking differently from the people of the target country, in our case, Australia.

According to government-published 1996, 2001 and 2006 census data concerning religious affiliation, while the total number of Christians suffered a -0.6 per cent change (12,764,341 to 12,685,861) between 2001 and 2006 after a 1.45 increase between 1996 and 2001, the number of Buddhists grew first by 79 per cent (+158,001) in this period and by 17

¹¹ cf. Merriam-Webster (<http://www.merriam-webster.com/dictionary/racism>) and Oxford Dictionaries (<http://oxforddictionaries.com/definition/english/racism?q=racism>)

per cent (+60,945) in the 2001-2006 period, the number of Hindus increased by 41.9 (+69,279) and by 55 per cent (+52,374), while the number of people avowing themselves to be supporters of Islam grew by 40.1 per cent (+80,693) between 1996 and 2001, and by 20.9 per cent (+58,823) in the following period. In addition to this, Islamic leaders like the chairman of the Islamic College of Brisbane, Mohammed Yusef emphasised that even this figure should be challenged claiming that many Muslims (and do not disclose their religion in official surveys because they fear persecution¹². We can see similar changes in the figures when looking at the chapters of the census documents going into details about languages used at home – a significant increase can be noticed in the number of the people speaking Hindi at home (1996: 33,989 > 2001: 47,817 > 2006: 70,008) and Arabic (177,606 > 209,372 > 243,662), which is also a factor easily noticeable for the man in the street, and thus influencing governmental policies as well.

It is also of importance that according to analysis of public opinion poll data, Australians had gradually turned against boat people since the 1970s. Katherine Betts, professor of sociology at the Swinburne University wrote an analysis, which, supporting the aforementioned trends and consequences, shows that while in the 1970s around 70 per cent of Australians supported that at least a limited number of refugees arriving by boat should be allowed to stay in the country, another public opinion poll in 1993 showed that 44 per cent of people would have sent them right back without assessing their claims and 46 per cent would have approved of holding them in processing centres during the determination of their refugee claims. Another poll conducted after the Tampa affair in 2001 showed that 71 per cent of Australians approved of the detention of illegal immigrant while their claims were being assessed.¹³

While the government's tightening policies can be partly explained by the desire to build political capital based on the public opinion, Peter Browne, senior research fellow at the Swinburne Institute for Social Research, argues in a 2001 analysis of his that after studying numerous 2010 pre-election polls he found that "What the polls over the past two months have shown very clearly is that when people say they favour tougher asylum seeker policies

¹² Mohammed Yusef qtd. in Annie Guest, *Guarded Muslims 'halve census figures'*, ABC News, <http://www.abc.net.au/news/2011-07-18/muslim-population-census-fears/2798462>.

¹³ Katherine Betts, *Boat people and public opinion in Australia*, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FACP56%22>.

[...] that attitude doesn't appear to be translating into how they will vote [...] the figures suggest the electoral impact of the issue will be mild or non-existent"¹⁴.

4. Acts comprising the Pacific Solution

In the heated pre-election campaign of 2001, the Tampa affair soon became an important issue. In fact, John Howard stated during the campaign that "we will decide who comes to this country and under what circumstances"¹⁵. The Pacific Solution in fact was a direct answer to the August events, as the first bill concerning the issues of asylum seekers and later enacted as the *Border Protection (Validation and Enforcement Powers) Act 2001* (further referred to as BPA) was passed on 29 August in 2001.

The most important aim of the BPA was to retrospectively legitimise the procedures of Australian authorities during the crisis (the occupation of the Norwegian ship by the Special Forces as well as the forced transfer of the asylum seekers to third countries). The BPA did not only introduce provisions regarding the detention of persons found on vessels and aircrafts, but it also stated that the officers detaining these people "may take the person, or cause the person to be taken, to a place outside Australia." (Schedule 1, 3Ab). The BPA also rendered it possible for Australian authorities to "direct the master [...] of a ship [suspected of carrying unlawful immigrants...] to take the ship, and any person on board the ship, outside the territorial sea." (4.1).

The migration act in force (*Migration Act 1958*) in 2001 defined the migration zone as the "area consisting of the States, the Territories, Australian resource installations and Australian sea installations" (Section 5). To exclude some offshore places, the Parliament enacted the *Migration Amendment (Excision from Migration Zone) Act 2001* (further referred to as MMA1), which was to amend the *Migration Act 1958* in a way that it would excise several territories from the migration zone, including the Territory of Christmas Island and other sea or resource installations (Schedule 1, 1 Subsection 5(1)) – places which the majority of asylum seekers reached first. The MMA1 also introduced the term "offshore entry person", who was an unlawful non-citizen entering Australia at an excised place (Schedule 1, 5 Subsection 5(1)). In accordance with the act, offshore entry persons were barred from applying for a visa, and the only person to have the right to lift the bar was the Minister for

¹⁴ Peter Browne, *Boats and votes: more evidence on the opinion gap*, Inside Story (2010), <http://inside.org.au/boats-and-votes-more-evidence-on-the-opinion-gap/>.

¹⁵ John Howard, "Election Policy Speech" (speech, 28 October 2001)

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

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

After Australia’s signing an Administrative Agreement with the tiny island country Nauru in September 2001 and a similar agreement with Papua New Guinea in October to accommodate asylum seekers for the duration of their processing, these two countries became Australia’s major partners in resolving her issues with unlawful non-citizens¹⁶. The construction of the Offshore Processing Centres in these countries, as well as the provision of the asylum seekers were at Australian expense. In these centres, officers of the Immigration Department and the UNHCR (United Nations High Commissioner for Refugees) processed the asylum seekers¹⁷. The persons considered genuine refugees were eventually resettled in Australia or a third country, and as Phillips and Spinks emphasise, Australian authorities were “trying to find resettlement solutions in a third country in preference to Australia”¹⁸.

5. Criticism

5.1 Financial effects

Opponents of the Pacific Solution have been criticising it for numerous reasons. Some consider it a ‘blunder’ because of the high expenses it inflicted on the Australian government (almost \$300 million in less than a year)¹⁹, while others argued that the Pacific Solution depended on promises to Papua New Guinea and Nauru, which, according to Jupp, “could only be met either by finding other states to ‘share the burden’ or by Australia taking several

¹⁶ Phillips and Spinks, *Boat arrivals*, 14

¹⁷ James Jupp, *From White Australia to Woomera* (United Kingdom: Cambridge University Press, 2002), 195

¹⁸ Phillips and Spinks, *Boat arrivals*, 14

¹⁹ e.g. Australian Council for International Development, *Son of Pacific Solution Cost Too High* (<http://www.acfid.asn.au/archive//news-media/media-releases/son-of-pacific-solution-cost-too-high>) or A Just Australia, *A Price Too High* (http://www.ajustaustralia.com/informationandresources_researchandpapers.php?act=papers&id=83)

hundred whom it could have taken in the first place under the existing system”²⁰. A few months before the end of the Pacific Solution, a study was published by Oxfam Australia (the local branch of an international human rights organisation), which stated that the government had spent at least one billion dollars on offshore processing since the enactment in 2001. Bem and his co-authors compared this to the estimates of the Department of Immigration and Citizenship, which suggested that to process 1,700 asylum seekers for 90 days each at an onshore processing centre would have cost around 35 million²¹. We also know, however, that the 90-day processing time was a mere target number of the government, and in almost forty per cent of the cases it was not met (e.g. in the 2010-11 program year, the average 90-day processing rate was 60.7 per cent²². However, even if we take this into consideration and calculate with an average processing time of a year, processing the 1,700 asylum seekers previously processed offshore would have cost only 140 million.

5.2 Adherence to international law

Other critics, including Amnesty International have argued that the new immigration policy was not in fact compliant with international law. Australia has ratified numerous international treaties designed to protect the rights of asylum seekers, and it is a party to the 1951 Convention and Protocol Relating to the Status of Refugees (CPRSR), as well as the 1967 International Covenant on Civil and Political Rights (ICCPR). Mansted states that the three primary legal obligations under the two above-mentioned treaties which the Pacific Solution calls into question are the following: prohibition of refoulement (the return of an alleged refugee to his state of origin), discrimination due to illegal entry and arbitrary detention.²³

5.2.1 Prohibition of refoulement

While no international treaty obligates states to accept every refugee arriving in its territory, in accordance with the CPRSR, no state may return an asylum seeker to another

²⁰ James Jupp, *From White Australia*, 195

²¹ Kazimierz Bem et al., *A Price Too High: the Cost of Australia's Approach to Asylum Seekers*. A Just Australia, Oxfam Australia and Oxfam Novib, August 2007. Web. 25 Nov 2012. 4

²² Australia. Department of Immigration and Citizenship. Fact Sheet 61 - Seeking Protection Within Australia. 2012. <http://www.immi.gov.au/media/fact-sheets/61protection.htm>.

²³ Rachel Mansted, “The Pacific Solution – Assessing Australia’s Compliance with International Law”, *Bond University Student Law Review*. 3.1 (2007), 3

territory should his or her life or freedom would be threatened there. Although there is one exception to the prohibition of refoulement – a state may force back a refugee if he or she poses a danger to the state’s security after individual assessment – asylum seekers subject to the Pacific Solution are not individually assessed before their removal from the country.²⁴ As the majority of asylum seekers are transported to Nauru and Papua New Guinea, it must be examined if there is a risk of persecution in these countries. Despite the fact that Australia excised certain territories from her “migration zone”, the prohibition of refoulement applies to these territories as well – to avoid the prohibition, Australia would have to renounce them. The issue here is whether sending asylum seekers to Papua New Guinea and Nauru amounts to refoulement.²⁵ While critics of the policy argue that the conditions of the processing facilities are not satisfactory thus mean a threat to the asylum seekers (e.g. Australian Human Rights Commission, Inquiry into Australia’s agreement with Malaysia in relation to asylum seekers, 20), Nauru and Papua New Guinea are generally considered safe for future refugees.²⁶ As the removal of refugees to a third country where their lives are not threatened does not constitute refoulement, the Pacific Solution in this respect does not violate international laws.

5.2.2 Prohibition of discrimination of illegal immigrants

The prohibition of imposing penalty for illegal entry is also one of the elements of the Convention Relating to the Status of Refugees (189 UNTS 150, article 31), which is arguably violated by the Pacific Solution. Temporary Protection Visas issued for unauthorised asylum seekers since their introduction in 1999 had a validity of three years, after which the person’s need for protection was reassessed.²⁷ Arguably, this special visa can be considered as limited access to the Australian visa system, but according to Mansted, it will not breach international law if objectively justifiable on administrative grounds.²⁸

5.2.3 Prohibition of arbitrary detention

Mandatory detention, which has been a governmental policy since the 1994 enactment of the *Migration Reform Act 1992*, is also a neuralgic point when criticising the Pacific

²⁴ Mansted, *The Pacific Solution*, 4

²⁵ *ibid.*, 4

²⁶ *ibid.*, 5

²⁷ Phillips and Spinks, *Boat arrivals*, 15

²⁸ Mansted, *The Pacific Solution*, 7

Solution for its not adhering to international law. Certain international lawyers, such as Penelope Mathew²⁹, claim that as international refugee laws clearly prohibit the detention of asylum seekers during the determination of their refugee status, the Australian policies indubitably violate these laws, as they allow detention only in case of some factors relevant to the individual (for example a high risk of absconding). The senate, however, maintains and has legislated that asylum seekers in offshore processing centres are not in immigration detention, for they are free to return to their home countries³⁰.

While the Pacific Solution as such can certainly be criticised from a moral point of view, from the above-mentioned it follows that whether Australia adheres to international law or not is rather unclear. As Mansted concludes, “while Australia’s implementation of the Pacific Solution has deserved much of the criticism levelled at its international legality, only certain aspects of the scheme can conclusively be categorised as violations of Australia’s international legal obligations”³¹.

5.3 Condition of processing centres

Human rights organisations fiercely criticised the Pacific Solution for the inhumane physical conditions of the camps. A report titled “Repeating Despair on Nauru” by Caroline Fleay, lecturer at the Centre for Human Rights Education at Curtin University, Sydney, includes a detailed description of the processing centre in Nauru. According to the report, metal containers holding fifteen people were erected and enclosed with high wire fences, and in the first six months, electricity was only provided to communal areas, meaning that sleeping areas could not be cooled or lit, though considering the tropical climate of the island, its weather was often hot and humid with many mosquitoes. Fresh food was also in short supply due to the remoteness of the island, and it was also reported that the food was stale and insects were found in it. Instead of continuing with the lengthy description, we shall have a closer look at yet another description – that of the ill-famed Woomera Immigration Reception and Processing Centre located near the village of Woomera in South Australia, where the 2002 hunger strikes, lip-sewings and riots occurred. In a 2002 Committee forum, Jacqui Everitt, a lawyer having worked on behalf of detainees, gave a talk on the conditions she had seen in Woomera. Similarly to the report on Nauru, she spoke about 15 metre razor wires, tin

²⁹ Penelope Mathew, “Australian Refugee Protection in the Wake of the Tampa”, *American Journal of International Law*. 96.3 (2002), 665

³⁰ Senate Legal and Constitutional References Committee, qtd. in Mansted, *The Pacific Solution*, 8

³¹ Mansted, *The Pacific Solution*, 11

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

5.4 Psychological effects of long-term detention

While some organisations criticised the Pacific Solution for the physical conditions of the camps being inadequate (cf. 5.3), numerous acknowledged psychiatrists expressed criticism for the psychological effects of long-term detention. Already back in 2002, Human Rights Commissioner Dr Sev Ozdowski gave the following report at an International Mental Health Conference: “As Human Rights Commissioner, I have the responsibility to inspect and report on conditions in immigration detention centres. These visits have raised considerable concerns for me because I could see the visible changes in individuals I had met previously. I could also gauge the changes in mood in general as various factors caused many adults and their children to remain in remote centres for well over a year, remote from community contacts and cultural/religious support, and increasingly devoid of hope.”³² In yet another interview, the 2012 Australian of the Year, psychiatrist Pat McGorry described detention centres as “factories for mental illness and mental disorder”³³.

As Simon Tatz, director of communications for the Mental Health Council of Australia and Kim Ryan, CEO of the College of Mental Health state in their article titled Detention Centres are Factories for Mental Illness, detained asylum seekers are more exposed to depression, anxiety and posttraumatic stress disorder. They argue that “there is evidence regarding the length of detention and prior exposure to interpersonal trauma on rates of depression”. Their organisations, together with several other colleges, institutes and associations, have united to demand an independent investigation into the standards of mental health care in detention centres, though emphasised that they did “not challenge the Government’s policy of mandatory detention, as that is a separate and extremely complicated debate”. A parliamentary committee was later called up, which in its final report concluded

³² Sev Ozdowski, *Long-term detention and mental health*, http://humanrights.gov.au/about/media/speeches/human_rights/mental_health_melbourne.html.

³³ qtd. in Adam Creswell, “Call to abandon ‘factories for mental illness’”, *Australian*, 26 Jan 2010, <http://www.theaustralian.com.au/news/nation/call-to-abandon-factories-for-mental-illness/story-e6frg6nf-1225823428382>.

the same negative effects of long-term detention³⁴, and Christopher Bowen, Minister of Immigration and Citizenship has already promised to the public that they would do everything to move people living in detention centres into the community as quickly as possible³⁵. We can see, however, that just as in the case of the conditions of the processing centres, according to the experts, it was not the fact that these facilities were located in third country that they found disturbing, but the conditions and the length of detention that caused the mental problems of the detainees.

5.5 Conclusion of criticisms

For years, the Pacific Solution was primarily criticised for the above-mentioned flaws – being too expensive, not adhering to international law, not taking the human rights of the asylum seekers into consideration, and not having adequate facilities for refugees in the camps. In the recent years, however, its actual results have been questioned as well. During the in-force period of the Pacific Solution acts, as it is shown by Figure 1 and 2, the number of arrivals decreased significantly. This, according to the official position, proves the success of the Pacific Solution – it seems to many that illegal immigration into Australia has been arrested. This is highlighted also in an address to the Lowy Institute for International Policy by Tony Abbott, current leader of the opposition: “Between 1999 and 2002, the Howard government successfully reduced a flood of unauthorised boat arrivals to a mere trickle. Between 2002 and 2007, less than 20 boats arrived with fewer than 300 passengers”.

5.6 Interpretation of data

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

³⁴ Joint Select Committee on Australia’s Immigration Detention Network, 110

³⁵ Interview with Emma Alberici, ABC Lateline

countries that are in some ways better than those of the country of origin (e.g. political or religious freedom, attractive climate, better living conditions in general etc.).

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

Figure 3 contains the asylum applications submitted at the first instance in Australia and New Zealand between 1994 and 2008. When taking a closer look at it, the similar tendencies become clear, but it is even more apparent on Figure 4, which is based on the changes from year to year in the number of submitted asylum applications in the two countries (due to the fact that the same date was used as in Figure 3, the starting year in this case is 1995). The initial success of the Pacific Solution becomes even more questionable when we notice the same drop in the numbers in the affected years. When comparing Figures 5 and 6, each containing the averages of the statistics of Australia and New Zealand and five other developed countries respectively, we can see the same tendencies.³⁶

6. Current situation

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

After Kevin Rudd's forced resignation in 2010, the new Labor Prime Minister, Julia Gillard announced that the issue of unauthorised arrivals was one of the most urgent problems to be dealt with by her future government, although she had previously stated that the "so-

³⁶ The data of the figures are from the website of the United Nations Human Rights Council (<http://www.unhcr.org/42b0195c2.html> and <http://www.unhcr.org/49c796572.html>).

called Pacific Solution [...] is costly, unsustainable and wrong as a matter of principle”³⁷, when the Howard government was in favour of stricter immigration policies.

When the first bill which would have reintroduced offshore processing centres was not passed by the Parliament on 27 June 2012, the following day Prime Minister Julia Gillard, together with Minister of Immigration and Citizenship Christopher Bowen announced at a press conference that a panel of experts led by Air Chief Marshal Angus Houston was to be established to compile a report on “the best way forward for our nation in dealing with asylum seeker issues”³⁸. In her statement, she also suggested that acts leading to the establishment of third country detention centres would serve the benefit of illegal immigrants, as they would be deterred “from making very risky journeys at sea, and paying a people smuggler the price of that risky journey”³⁹.

The report of the Expert Panel on Asylum Seekers released on 13 August contained a range of recommendations on short, medium and long term solutions of the issue, one of the short term measures being the reestablishment of processing centres in third countries in order to provide a “circuit breaker to the current surge in irregular migration to Australia [and] to diminish the prospect of further loss of life at sea”⁴⁰. The panel also recommended that Australia’s Humanitarian Program be increased to 20,000 places annum from 13,750 and subject to prevailing economic circumstances, to around 27,000 within five years.⁴¹

The Gillard Government endorsed the recommendations, which would cost an estimated 1 billion Australian dollars annually⁴², and an amended bill titled the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012 was subsequently – on 15 and 16 August – passed by the House of Representatives and the Senate as well, which empowered the Government to re-establish offshore processing facilities in the Pacific.

³⁷ Julia Gillard, qtd. in Phil Mercer, *Is Australia asylum U-turn a ‘better option’?*, BBC News, <http://www.bbc.co.uk/news/world-asia-19267489>

³⁸ Julia Gillard, "Subjects: Asylum seeker legislation; Expert advisory panel", Press conference.

³⁹ Ibid.

⁴⁰ Janet Phillips, *‘Pacific Solution’ revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island*, http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1893669/upload_binary/1893669.pdf;fileType=application/pdf.

⁴¹ Australia, Expert Panel on Asylum Seekers, *Report of the Expert Panel on Asylum Seekers*, 14, http://expertpanelonasylumseekers.dpmc.gov.au/sites/default/files/report/expert_panel_on_asylum_seekers_full_report.pdf.

⁴² Michelle Grattan, "PM's Pacific Solution Mark II", *The Age*, 14 August 2012, <http://www.theage.com.au/opinion/political-news/pms-pacific-solution-mark-ii-20120813-24508.html>.

The Gillard Government sent defence personnel to Nauru and Manus Island in the same month to launch the project of building processing centres being able to host 2100 asylum seekers. The formal agreement between Prime Minister Gillard and Papua New Guinea PM Peter O'Neill was signed in September, which would allow Australia to send asylum seekers to Manus for processing, where the work commenced immediately. The government has been reported to hope to send asylum seekers to either Nauru or Manus Island by the end of the month. During the press conference following the signing of the agreement, both PM Gillard and Defence Force Chief Angus Houston emphasised that processed asylum seekers "should wait the same amount of time for resettlement opportunity as if they hadn't moved" and that "the quicker they are processed the better it is", which are in agreement with the expectations of human rights organizations.⁴³

7. Conclusion

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

It has become apparent that in the last few decades, the public opinion has turned against illegal immigrants, and political leaders seem to have been trying to satisfy the people's expectations related to the strictness of policies governing the immigrants' arrival. Strangely enough, however, analysis shows that there is no direct correlation between the changes in the general opinion and the electoral impact of the changes.

As for the criticism of the Pacific Solution, we have found that the government was well-prepared for the attacks concerning the adherence of the policy to international law, as relatively satisfying answers have been given related to the questions of the prohibition of refoulement, arbitrary detention and discrimination. It is not clear if offshore processing has a worse psychological or physical effect on asylum seekers than similar facilities in mainland Australia – so much so that one of the most ill-famed and criticised of them, the former Woomera Immigration Reception and Processing Centre lies in the outback of the country. This also means that a large number of criticisms seem to be unfounded.

⁴³ "Australia, PNG sign offshore processing agreement", ABC News, 9 September 2012, <http://www.abc.net.au/news/2012-09-08/gillard-signs-agreement-on-png-detention-centre/4250250>.

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

Since the arrival of the first boat people, the number of illegal immigrants arriving by such means as well as the policies taken by the different governments has varied in accordance with exterior factors. While it seems that the Gillard Government is determined to revive this controversial policy, the debate is ongoing and although today both possible future candidates (Julia Gillard and Tony Abbott) support the Pacific Solution to an extent, a change in policy is likely to occur if the public opinion shifts. Although it is commonly known that the public opinion tends to become more radical and extreme in critical times and governments aim to meet their expectations, the first time bills related to the Pacific Solution were passed the global financial crisis was still far. Thus, no direct connection can be seen between the actions of the government and the economic situation of the country in this case, meaning that it cannot be stated that the possible end of the global crisis would cause the end of such policies in Australia, too.

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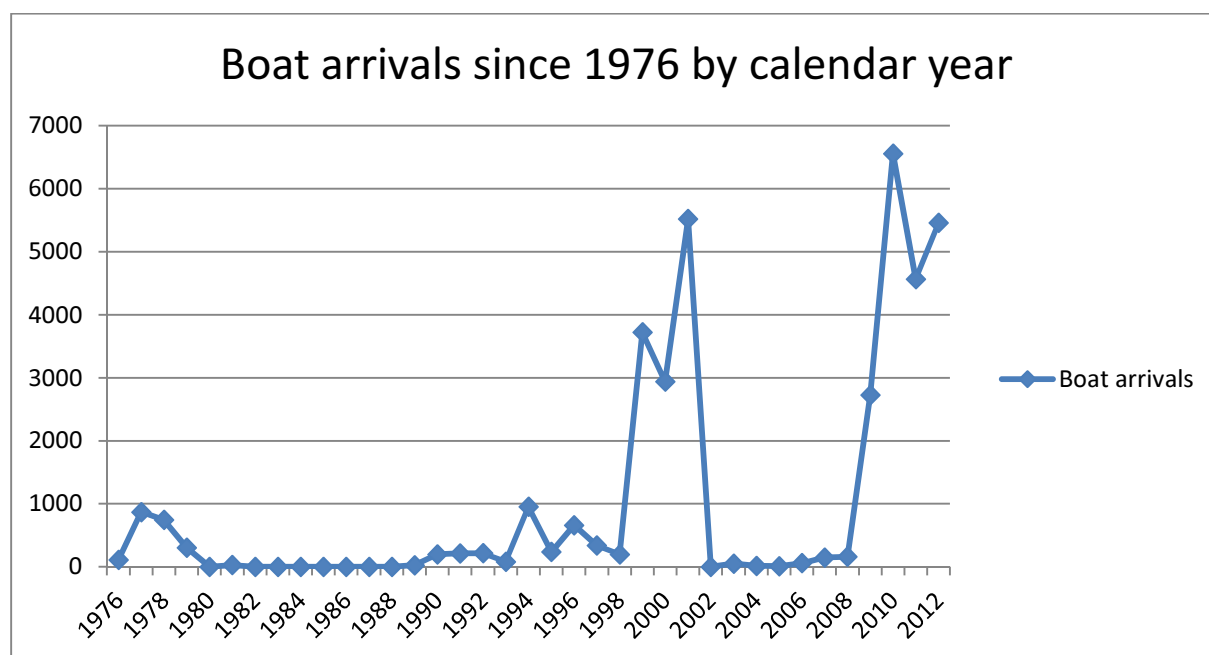
Appendix

Figure 1: Boat arrivals between 1999 and 2011

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

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

Figure 2: Boat arrivals by calendar year 1979 to 2010



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

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

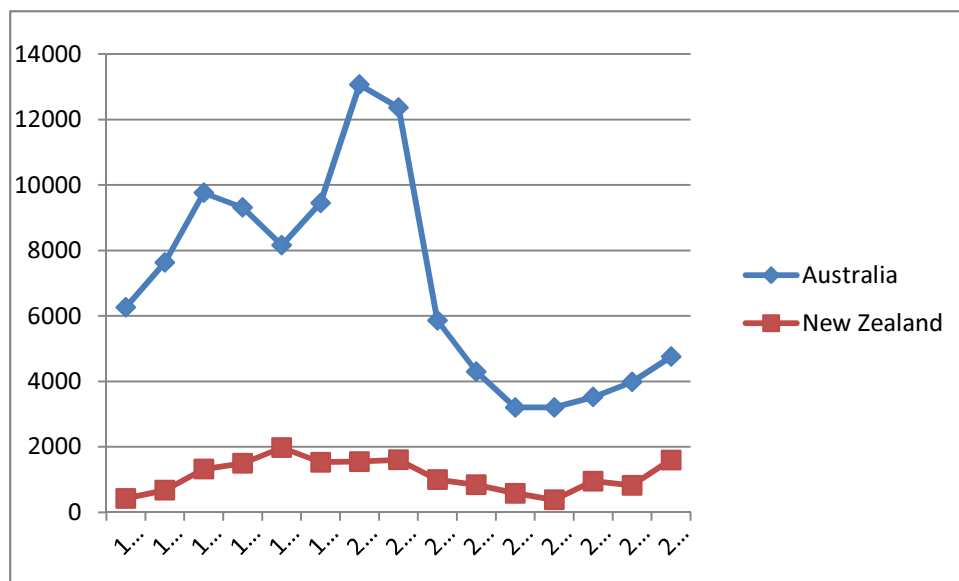


Figure 4: Australia and New Zealand Asylum Applications – Comparison of yearly changes

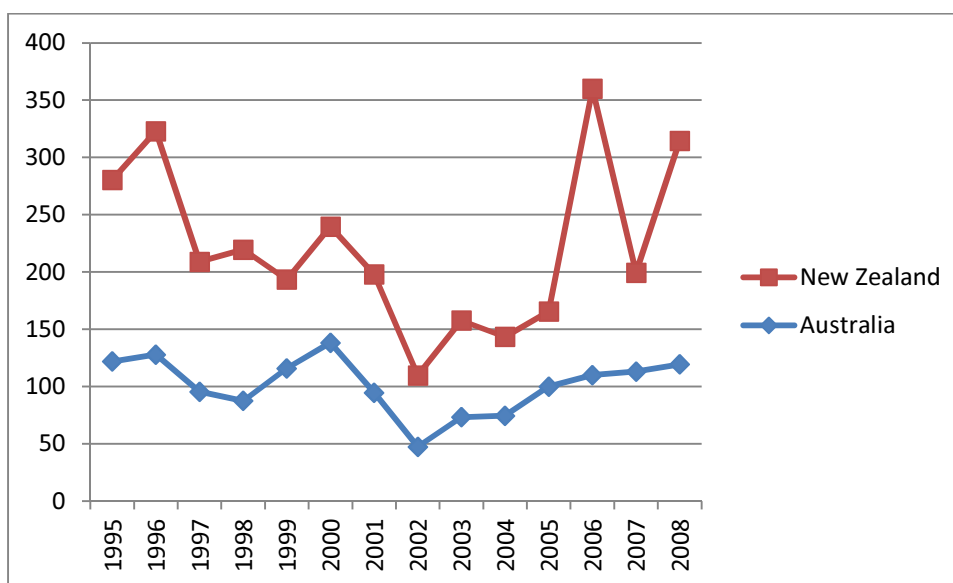


Figure 5: Asylum applications – New Zealand and Australia average

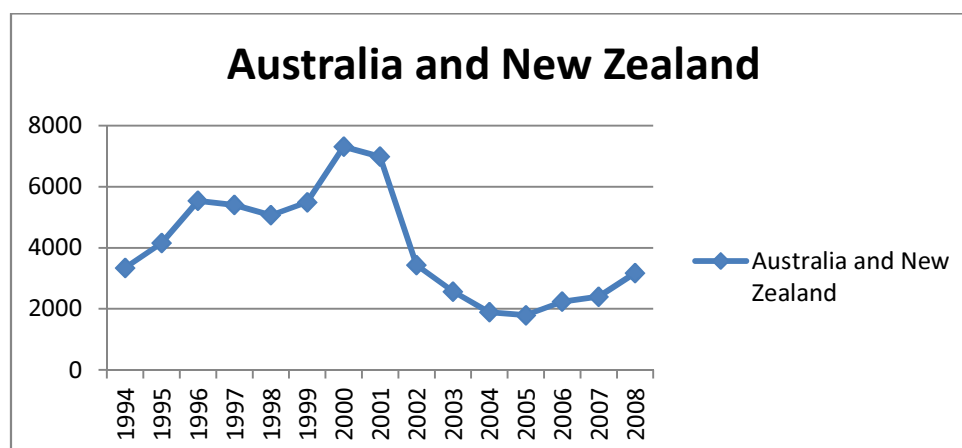


Figure 6: Asylum applications – France, Germany, Italy, Netherlands, Spain average

