



Sharing responsibility, not shifting responsibility: How Australia can improve refugee protection in Asia-Pacific

Amy Nethery¹ and Asher Hirsch²

¹Faculty of Arts and Education, and Alfred Deakin Institute for Citizenship and Globalisation, Deakin University, Melbourne, Vic., Australia

²Refugee Council of Australia, Surry Hills, NSW, Australia

Executive summary

Australia implements a range of refugee policies that deny asylum seekers and refugees access to Australian territory. These policies, known as externalisation policies, include maritime interception and the interdiction of sea vessels; extraterritorial detention and processing; third-country disruption and interception; carrier sanctions; and public messaging campaigns. These policies operate 'offshore', and require the partnership of other states in the Asia Pacific region.

Refugee externalisation policies prevent people from reaching territory where they can apply for protection under the 1951 *Convention Relating to the Status of Refugees* (the Refugee Convention). Without safe pathways to protection, approximately 8 million refugees in the Asian region are stuck in states that do not recognise their special status under international law. Refugees are vulnerable to exploitation, trafficking, police crackdowns, arbitrary detention, and refoulement. These conditions have been exacerbated by COVID-19.

Australia's policies contribute directly and indirectly to a humanitarian tragedy in the Asia Pacific region. A different policy approach is urgently needed. This Policy Briefing Paper recommends that:

- Australia's current offshore processing policy must be immediately dismantled, and the people still confined to Nauru and Papua New Guinea be given the option of transferring permanently to Australia or New Zealand.
- Australia must leverage its international relationships to work with Asian states to provide safe pathways and durable solutions for refugees, supported by equitable sharing of responsibility for refugees, based on national capacity.

Contents

Discussion of policy issue	2
What is the issue?	2
Why is this an issue of strategic importance?	2
What is the impact of COVID-19 on this issue?	3
Who or what has the power or resources to act?	4
Where can current policy be improved?	4
What further action is needed and by whom?	4
Related areas that need further research and exploration	5
Proposals – What should be done?	5
References	6

Discussion of policy issue

What is the issue?

With 79.5 million people forcibly displaced globally (UNHCR, 2019), and approximately 8 million in the Asia Pacific, refugee protection is one of the most pressing governance challenges of our time. Instead of creating durable solutions, wealthy Western states, including Australia, have implemented a range of refugee externalisation policies designed to restrict or deny refugees' access to their territory. Refugee externalisation policies include maritime interception and the interdiction of sea vessels; extraterritorial detention and processing; third-country disruption and interception; carrier sanctions; and public messaging campaigns. These policies operate 'offshore', often in cooperation with other states.

Externalisation policies do not address the underlying causes of displacement, nor do they seek to deliver long-term outcomes that respect refugees' rights. Rather, these policies make it difficult for refugees to find protection and a durable solution to their plight. These policies

- frequently breach international human rights laws and norms;
- prevent refugees from escaping dangerous regions and finding safety;
- push the protection responsibility of millions of displaced people onto other poorer states; and
- leave people stranded in states that do not recognise their special status under international law, thus increasing their risk of exploitation and persecution.

Australia's policies, achieved through bilateral partnerships with Asian and Pacific states, are expensive and harmful. Since 2012, 4183 people have been detained indefinitely and in poor conditions on Nauru and Papua New Guinea. The policy, which has cost AU\$7 billion, has caused significant physical and mental health problems among detainees, and caused the deaths of 13 people (Border Crossing Observatory, 2020). Since 2013, no boat carrying asylum seekers has been successful in reaching Australia, thus closing a protection pathway of last resort (Kaldor Centre for International Refugee Law, 2019).

Australia has spent millions of dollars on training, funding and supporting police and immigration officials throughout the region to prevent refugees travelling to Australia, and millions more on information and advertising campaigns designed to dissuade potential asylum seekers and people smugglers (Hirsch, 2017). In implementing these policies, Australia breaches its obligations under international refugee law, and has been found in breach of other human rights laws on scores of occasions (Gleeson, 2018).

Consecutive Australian governments have pursued strong border policies because of the belief that it is politically popular with some voters. Despite the firm bipartisan commitment to externalisation policies, analysis of voting behaviour suggests that the idea that a tough approach is needed to win elections might be more myth than reality (McAllister, 2003). An alternative approach has not yet been tested.

Why is this an issue of strategic importance?

Humanitarian and human rights

The failure to respond to the needs of refugees and asylum seekers in the Asia Pacific region has created a humanitarian tragedy. By removing existing pathways to protection, and adding additional barriers, Australia's policies have dramatically increased the danger for people needing protection and made their lives even more precarious.

As a signatory to international human rights laws, Australia has committed to upholding the human rights of people who need its protection. Furthermore, as one of the world's wealthiest countries, Australia has significant financial, human, and infrastructure resources to implement a safer, fairer, human-rights-led response to humanitarian crises. By stepping away from its responsibilities and failing to commit its resources to assist, Australia has allowed humanitarian crises to unfold.

Regional economic and security

Australia's externalisation policies are exceedingly expensive. Australia invests considerable funding in externalisation policies and has redirected other funding streams, such as its foreign aid program, to externalisation. This considerable funding should be redirected to make positive change in the Asia Pacific. This could include support for poor states, such as Bangladesh, that accommodate large numbers of refugees. Or Australia could increase its financial support of the UNHCR and other aid agencies to provide better support for people who are displaced.

Australia should also resettle significantly more refugees from the region, and encourage other states in the region to create opportunities for formal protection. Although this would be unlikely to offer a durable solution to all people who are displaced in the region, it would be a welcome assistance for those countries, like Bangladesh, whose large refugee populations pose a significant risk to economic development and social and political stability.

The broader economic and security benefits of protecting refugees are considerable. When refugees are granted formal protection status, and can access healthcare, education and work rights, they contribute substantially to the society and economy of the state in which they live and, where possible, to the development of their country of origin. In contrast, long-term personal insecurity can have negative consequences for human and state security by propping up black markets and creating an environment for criminal trafficking organisations to operate.

Regional political leadership

Australia's externalisation policies are achieved through a range of bilateral and multilateral arrangements that exploit power asymmetries, usually by providing significant financial and diplomatic incentives. These arrangements override and undermine other more constructive aspects of Australia's bilateral relationships, and can provide support for undemocratic regimes.

The Asia Pacific has been described as a refugee policy vacuum. Despite hosting a significant proportion of the world's refugees, the region has the fewest signatories to the 1951 *Convention Relating to the Status of Refugees*, and few states have domestic policies or laws relating to refugees (Nethery, 2015). Australia's externalisation policies are a missed opportunity for Australia to show leadership in the Asia Pacific region by encouraging a greater adherence to international law and norms that would benefit the region and its people. When Australia openly flouts its obligations to refugees, its international influence on other matters pertaining to human rights is severely eroded.

International influence

Australia's externalisation policies have been closely watched by governments and media overseas, particularly in Europe and the United Kingdom, where the 'Australian model' has been touted by conservative and populist politicians as a legitimate policy option (Ghezelbash, 2018). For example, in 2018, the former Prime Minister of Italy, Matteo Salvini, stopped boats carrying refugees from docking in Italian ports citing Australia's policies as a model (Mathew, 2020).

Australia has remained committed to its tough approach at the same time that globally, progress has been made towards better treatment of refugees and migrants. The United Nations Global Compact on Refugees (the Refugees Compact) and the Global Compact on Safe, Orderly, and Regular Migration (the Migration Compact) are non-binding agreements that were widely supported when they came into being in 2018. Australia was one of 176 countries to support the Refugees Compact. However, Australia was one of 17 countries to either vote against or abstain from signing the Migration Compact, citing concerns that it would diminish Australia's ability to create its own border policies (Sherrell, 2019). With this decision, Australia has retreated from the international community (Dastyari, 2018).

What is the impact of COVID-19 on this issue?

Faced by the COVID-19 pandemic, 75 per cent of states worldwide have partially or fully closed their borders, leaving refugees trapped in conflict zones or precarious situations in transit states (Ghezelbash, 2020). Tight measures implemented by states to close borders may also heighten the risk of further COVID-19 spread, as people desperately seeking protection are likely to bypass health checks and quarantine while seeking alternative paths to safety (McAdam, 2020).

For those held in refugee camps or immigration detention facilities, the limited ability to adequately practice self-distancing, coupled with a lack of sanitation, is creating a greater risk for the rapid spread of COVID-19, exposing masses of people to infection and possibly death (McAdam, 2020). Panic over the spread of COVID-19 within the Bangladeshi refugee camp at Cox's Bazaar has motivated some Rohingya refugees to engage people smugglers to travel by boat to other Southeast Asian states.

The COVID-19 outbreak has also caused many of the world's informal economies to be shut down, leaving large groups of people vulnerable to extreme poverty. The demand for lower production costs in light of the economic impact of the pandemic, coupled with less oversight by authorities, means millions of workers in low-wage sectors are now likely to face greater exploitation (UNDOC, 2020). Experts are particularly worried about vulnerable people's increased risk to trafficking.

Who or what has the power or resources to act?

Australia has significant diplomatic power and resources to respond to this crisis. On a bilateral level, Australia already has many long-standing agreements on asylum with neighbouring states can be leveraged to provide safe pathways to protection and durable solutions.

One of Australia's key resources is its position as co-chair of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process). This multilateral forum has 45 member states and the partnership of the United Nations High Commissioner for Refugees, International Organization for Migration, United Nations Office on Drugs and Crime, and International Labour Organization. It provides a platform for key regional actors to influence policy and public discourse regarding refugees in the Asia Pacific. Australia has provided the majority of funding to facilitate this forum and has significant influence over the forum's activities. While Australia has predominantly used the Bali Process to encourage states to increase border controls and deter people seeking asylum, the forum has enormous potential to encourage and assist states towards greater refugee protection in the region.

Australia can also increase its support of refugee support and civil society organisations operating throughout Asia, particularly refugee-led civil society organisations such as the Asia Pacific Network of Refugees. It can also increase its support for the United Nations Refugee Agency, Asia Pacific Refugee Rights Network, and other non-government organisations (NGOs) that offer services to displaced people in the absence of government support. These networks can be supported and expanded through joint advocacy, capacity strengthening, resource sharing and outreach.

Finally, Australia should resettle more refugees from the Asia Pacific region. It should work with other countries of resettlement, including New Zealand, Canada, and the United States, to increase their resettlement intakes from the region. It should also encourage and support other states in the Asia Pacific to formalise the status of refugees on their territory and provide safe pathways to resettlement.

Where can current policy be improved?

Australia must re-confirm its commitment to international refugee law, and implement policies that reflect its important role in providing protection for refugees in the Asia Pacific.

This means recognising the factors required for protection, including:

1. Right to seek asylum and protection from refoulement or return to the place of persecution;
2. Freedom from detention and freedom of movement and communication;
3. Legal status and a fair refugee status determination process;
4. Adequate food, clothing and shelter;
5. Access to health services;
6. Personal security and access to justice;
7. Access to education;
8. Right to work and a sustainable livelihood;
9. Right to family unity;
10. Right to a viable future through local integration, third-country resettlement, or voluntary repatriation.

Australia's current offshore processing policy must be immediately dismantled, and the people still confined to Nauru and Papua New Guinea be given the option of transferring permanently to Australia or New Zealand. This step is important for humanitarian reasons. It also releases significant funds that can be redirected to other programs, and is an important signal to the region of Australia's shift in approach.

Australia must leverage its international relationships to work with Asian states to provide safe pathways and durable solutions for refugees, supported by equitable sharing of responsibility for refugees, based on national capacity. Policies should be transparent and accountable, fiscally responsible, and adhere to international human rights laws and norms.

What further action is needed and by whom?

A pivot to a human rights, protection-focused strategy, in partnership with other states, will place Australia's asylum policy under the remit of the Department of Foreign Affairs and Trade. The proposed policy approach will involve a diminished role for the Australian Border Force.

In order to best respond to the human rights needs of refugees and asylum seekers in the region, Australia

must support and partner with regional and local civil society and human rights organisations, including organisations run for and by refugees, such as the Asia Pacific Network of Refugees and Asia Pacific Refugee Rights Network.

There is also a critical role for other states in the Asia Pacific to respect refugee rights and sign up to international refugee laws. Australia can play a positive and influential role through bilateral and multilateral relationships, and regional forums such as the Bali Process.

Related areas that need further research and exploration

In light of the COVID-19 pandemic and the unexpected closure of borders across the Asia Pacific, research is needed to understand the short- and long-term impacts of these measures to migration patterns. This includes better understanding of the risks and impact of COVID-19 on people living in refugee camps, and those living in cities and working in the informal economy. We need to understand the extent to which destitution has increased trafficking and exploitation in the region.

The dismantling of offshore processing will have an economic impact on Nauru and Papua New Guinea, which rely substantially on finance from these initiatives. Australia must develop alternative ways of supporting these states economically in a way that enhances their long-term economic and political development.

Refugee and asylum policy in the Asia Pacific, including the use of externalisation practices, has been the focus of extensive research in recent years. Despite this burgeoning body of literature, the transfer of evidence-based research into policy reform in Australia has been minimal. Existing policy fails to reflect evolving evidence about the most appropriate, ethical and legal ways for Australia to handle irregular migration. Further work is needed to bridge the gap between research and policy.

Proposals – What should be done?

Australia must re-confirm its commitment to international refugee law, and implement policies that reflect its important role in providing protection for refugees in the Asia Pacific.

Australia should immediately end its deterrence-based externalisation policies, including offshore processing, turn-backs, and third-country disruption and interception programs.

Resources should be redirected to supporting positive change in the Asia Pacific region, which would begin with the most pressing needs of refugees and move gradually towards an agreed and common regional strategy to protect refugees.

Australia should support civil society and human rights organisations working to improve the lives of refugees throughout the Asia Pacific.

Australia should use its international relationships, including its role as the co-chair of the Bali Process, to pursue this program of positive change, and encourage other states to follow its example.

Following recommendations from the Refugee Council of Australia (2019), we propose ten steps that could be implemented in any order, country by country, as opportunities arise:

1. Remove current barriers to existing refugee determination processes;
2. Create space for and support NGOs to provide vital services to refugees and asylum seekers;
3. Grant asylum seekers legal permission to remain in Australia while refugee status is determined;
4. Develop alternatives to immigration detention;
5. Grant refugees and asylum seekers the right to work;
6. Provide access to basic government services, including education and health;
7. Provide refugees with access to durable solutions;
8. Develop national asylum legislation;
9. Promote ratification of the Refugee Convention; and
10. Build greater regional consistency in asylum processes and protection strategies throughout the Asia Pacific, supported by equitable sharing of responsibility for refugees, based on national capacity.

References

- Border Crossing Observatory (2020). Annual Report on Border Related Deaths 2019. Research Brief No. 16. https://www.monash.edu/__data/assets/pdf_file/0012/2221410/BOB-Research-Brief-16-Border-Death-Annual-Report-2019.pdf Retrieved 12 May 2021.
- Dastyari, A. (2018). Explainer: why is Australia adopting the global refugee compact but not the migration compact? *The Conversation*. <https://theconversation.com/explainer-why-is-australia-adopting-the-global-refugee-compact-but-not-the-migration-compact-108167> Retrieved 12 May 2021.
- Ghezelbash, D. (2018). *Refuge Lost: Asylum Law in an Interdependent World*. New York: Cambridge University Press.
- Ghezelbash, D. (2020). Covid-19 and the end of asylum. Kaldor Centre for International Refugee Law, UNSW. <https://www.kaldorcentre.unsw.edu.au/publication/covid-19-and-end-asylum> Retrieved 12 May 2021.
- Gleeson, M. (2018). Research Brief: Australia's responsibility for offshore processing on Nauru and Manus Island. Kaldor Centre for International Refugee Law. https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Research%20brief_responsibility_Aug2018.pdf Retrieved 12 May 2021.
- Hirsch, A. 2017. The Borders Beyond the Border: Australia's Extraterritorial Migration Controls, *Refugee Survey Quarterly*, 36(3), 48–80.
- Kaldor Centre for International Refugee Law (2019). Factsheet: Turning Back Boats. https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Factsheet_Turning%20back%20boats_Apr2019.pdf Retrieved 12 May 2021.
- Mathew, P. (2020). Replacing asylum or leaving no one behind? *Comparative Network on Refugee Externalisation Policies*. <https://arts.unimelb.edu.au/school-of-social-and-political-sciences/our-research/comparative-network-on-refugee-externalisation-policies/blog/replacing-asylum-or-leaving-no-one-behind> Retrieved 12 May 2021.
- McAdam, J. (2020). The impacts of COVID-19 on the world's displaced people: A watching brief. *Kaldor Centre for International Refugee Law*, UNSW. <https://www.kaldorcentre.unsw.edu.au/publication/impacts-covid-19-world%E2%80%99s-displaced-people-watching-brief> Retrieved 12 May 2021.
- McAllister, I. (2003). Border protection, the 2001 election and the Coalition victory. *Australian Journal of Political Science*, 38(3), 445–463.
- Nethery, A. (2015). Asia's Refugee Policy Vacuum. *The Diplomat*. <https://thediplomat.com/2015/08/asias-refugee-policy-vacuum> Retrieved 12 May 2021.
- Refugee Council of Australia (2019). Improving refugee protection in Asia-Pacific: How Australia can make a practical difference. <https://www.refugeecouncil.org.au/improving-refugee-protection-asia-pacific> Retrieved 12 May 2021.
- Sherrell, H. (2019). Australia and the Global Compact on Migration. *Flagpost*. Australian Parliamentary Library. https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2019/March/Australia_and_the_Global_Compact_on_Migration Retrieved 12 May 2021.
- UNDOC (2020). *Impact of The COVID-19 Pandemic on Trafficking in Persons - Preliminary findings and messaging based on rapid stocktaking*, https://www.unodc.org/documents/Advocacy-Section/HTMSS_Thematic_Brief_on_COVID-19.pdf Retrieved 12 May 2021.
- UNHCR (2019). Global Trends. <https://www.unhcr.org/en-au/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html> Retrieved 12 May 2021.

About the authors

Dr Amy Nethery is a senior lecturer in Politics and Policy at Deakin University. She researches and teaches on the development and impact of asylum policies in Australia and Asia, with a focus on refugee externalisation policies. She has a particular interest in immigration detention policy, its history, evolution, diffusion, legal status, consistency with democratic norms, and human impact.

Asher Hirsch is a senior policy officer with the Refugee Council of Australia, the national peak body for refugees and the organisations and individuals who support them. His work involves research, policy development and advocacy on national and international issues impacting refugee communities. Asher is also a PhD candidate and lecturer at Monash University in public law, human rights, and refugee law. His PhD investigates Australia's extraterritorial migration control activities in Southeast Asia.

ADI Policy Briefing Papers

Volume 2, No.1
ISSN 2652-6859 (Online)

Commissioning editors

Mark Duckworth
Jo Birkett

Published by the Alfred Deakin Institute for Citizenship and Globalisation
May 2021

Deakin University
221 Burwood Highway
Burwood VIC 3125
Australia

Contact

adi-admin@deakin.edu.au
+61 3 9244 6384
Website: adi.deakin.edu.au