



IMA

ILLEGAL MARITIME ARRIVALS

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ARRIVAL IN AUSTRALIA BY BOAT - IMA



overview:

Prior 2013, it was termed Irregular Maritime Arrivals;

- arrived illegally by boat termed IMAs

- arrived by air illegally termed Non-IMAs

In 2013, Mins Scott Morrison, change it to IMA instead of irregular maritime arrivals.

Seeking asylum is not a criminal offence, however, Australia has mandatory detention for illegal entry to Australia.

Prior to 1992, illegal entry has discretionary detention.

In 1992, Paul Keating govt introduced mandatory detention.

EXPERT PANEL ON IMA

In June 2012, an expert panel led by retired Air Chief Marshal Angus Houston provided a report with 22 recommendations on asylum seekers.

- # No guarantee of resettlement in Australia

- # Subject to transfer to a regional processing centre.

- # No to family sponsorship for boat arrival.

- # Increased regional engagement

ILLEGAL MARITIME ARRIVAL



STATISTICS OF IMA

- There are over a 50,000 boat arrivals during Rudd – Gillard–Rudd era; there about 800 boats arrived. Andrew Metcalf was the secretary of the Dept of Immigration.
- This is named as legacy Case Load.
- As at 31 Dec 2017, app 36,362 granted BVEs, 19,590 remain in the community or some made voluntary departure through IOM assistance program.
- Largest numbers in Victoria 8200, followed by NSW 7780, QLD 1,426 so on.

STATISTICS ON BOAT ARRIVALS

Year	Nos of boats	Crew	Nos of people (excl crew)
2009	60	141	2726
2010	134	345	6555
2011	69	168	4565
2012	278	392	17 204
2013	300	644	20 587
2014	1	N/A	160
2015	0	0	0
2016	0	0	0

<https://www.aph.gov.au/.....>

PROTECTING AUSTRALIA'S BORDER



LEGISLATIVE CHANGES TO THE MIG LAW

- Several legislative changes to Mig Act and Mig Regs;
- s45AA of Mig Act and 2.08 of Mig Reg to convert all Onshore PV 866 to TPV 785.
- s46A (1) stops boat arrival to apply for ANY visa in Australia, however,
- s46A (2) gives power to the Minister to decide & grant PV to an IMA under public interest criteria.
- 2 types of Visas for IMAs; TPV 785 and SHEV 790
 - TPV 785 for 3 years; can apply subsequent TPV
 - SHEV 790 for 5 years; live, work, or study in rural.
 - Once this visa is granted that will create pathway to other visas.

LEGAL FRAMEWORK FOR IMA (contd)

- S189 to detain an IMA
- S36(2)(a), IMA to meet Australia's protection obligations under Refugee Conv 1951 and Refugee Protocol 1967.
 - Race
 - Religion
 - Nationality
 - Political Opinion
 - Member of a Social group, or
- S36(2)(aa) IMA to meet Complementary Protection obligation for real risk of significant harm.
- S195 gives power to the Mins to grant a PV without an application; it was used to grant Safe Haven Visa to Kosovar refugees
- s195 was used for an IMA *s14/2014 v Mins of Immi* instead of s46A.
- The HCA was critical about the decision; HCA issued an order of *Cetiorari* (writ from a superior court to a inferior court to review) & cost order.

ONLY TWO VISAS FOR IMA, NO OTHER IMA CAN APPLY

TPV 785 stay up to 3 years

SHEV 790 stay up to 5 years

ELIGIBILITY FOR TPV 785 OR SHEV 790

For both visas the applicant must meet the definition of Refugee stated in s5H of the Migration Act 1958

- Must be a refugee under the UN Refugee Convention
- Must meet Australia's refoulment obligations.



DIFFERENCES BETWEEN TPV 785 & SHEV 790

TPV 785 stay up to 3 years

- No need to live, work or study in regional Australia
- Need to meet health, character, and identity requirements.
- Can apply subsequent TPV once the TPV is expired

SHEV 790 stay up to 5 years

- Need to live, work or study full time in regional Australia for 5 yrs.
- Need to meet health, character, and identity requirements.
- Create pathways to apply for other visas after 42 months
- Need to live, work, or study full time or comb of both without govt benefit

BVE 050 WITH STRICT CONDITIONS

- Only Minister can grant BVE under s195A with strict conditions;
 - 8401; IMAs must report at a time and place specified by the minister
 - 8506; must notify the change of address with 2 working days
 - 8508; apply only for the visa specified by the Mins, not any other visa
 - 8564; must not engage in criminal conduct
- IMAs are to carry IMMICARD- immigration status card
- Eligible to Medicare while holds BVE, no BVE no medicare.
- 1st Oct 2017 was the deadline to apply for TPV or SHEV.
- If missed the deadline cannot apply either of the 2 visas.

FAST TRACK ASSESSMENT

Once a TPV or SHEV is refused

- The Dept send to IAA for fast track assessment
- IAA is the only form of Merit Review,
- No need for subm; but if do; within 21 days,
- 5 pages, at least 11 fonts, 2.54 cm margins.
- New info only under excep: circ under s473 DD.
- Practice Dir of IAA that's unique, must be followed.
- No face to face hearing, if hearing; only telephone.
- Merit Reviews generally completed in 6 weeks.

MV TAMPA IN 2001 - CHANGED THE LANDSCAPE OF AUSTRALIA'S IMMIGRATION



JUST THE BEGINNING OF IMA & PACIFIC SOLUTIONS

- In August 2001, the [Howard Government](#) refused permission for the Norwegian freighter [MV Tampa](#), carrying 433 refugees predominantly [Hazaras](#) of [Afghan](#) origin from a distressed fishing vessel in international waters and 5 crew to enter Australian waters. This triggered an Australian political controversy in the lead up to the [2001 federal election](#), and a diplomatic dispute [between](#) Australia and [Norway](#).
- When the *Tampa* entered Australian water, the Prime Minister Howard ordered the ship be boarded by [Australian special forces](#). This brought censure from the [govt of Norway](#), which said the Australian government failed to meet its obligations under international law at the UN.
- Within a few days, the government introduced the *Border Protection Bill* into the House of Representatives, saying it would confirm Australian sovereignty to "determine who will enter and reside in Australia". The government introduced the "[Pacific Solution](#)", whereby the asylum seekers were taken to [Nauru](#) where their refugee status was considered, rather than in Australia.

Border Protection Bill 2001

- Late on the night of 29 August, the Prime Minister introduced an emergency bill entitled the "Border Protection Bill 2001". This Bill would have provided the government with the power to remove any ship in the territorial waters of Australia (s 4), to use reasonable force to do so (s 5), to provide that any person who was on the ship may be forcibly returned to the ship (s 6), that NO civil or criminal proceedings may be taken against the Australian government or any of its officers for removing the ship or returning people to it (s 7), that no court proceedings are available to prevent the ship from being removed and from people being returned to it (s 8), and that no asylum applications may be made by people on board the ship (s 9). The bill was intended to enter into force at 9:00 Australian Eastern Standard Time, 29 August 2001 (s 2); thus making the bill [retrospective](#). It also attempted to ensure actions taken prior to legislation passage to remove ship and return people to it would have been treated as legal.
- The Opposition [Labor Party](#) announced they would not support the bill; nor would the [Greens](#), [Democrats](#) or independent Senator [Brian Harradine](#). The bill quickly passed the lower [House of Representatives](#), but was rejected by the [Senate](#) later that same sitting day. The Government attacked the Opposition for refusing to pass the legislation, but indicated it would not reintroduce it at that stage.
- The government subsequently acted to excise Christmas Island and a large number of other coastal islands from Australia's migration zone, effectively meaning that any asylum seekers who did not reach the Australian mainland would not be able to apply for refugee status. The Labor party supported the excision of some islands that it viewed as acting as a "magnet for people smugglers", but not others, such as [Melville Island](#), Northern Territory which it viewed as being too close to the mainland to justify excision. The other parties opposed excision of any islands.