

AUSTRALIAN LAWYERS FOR HUMAN RIGHTS REFUGEE LAW KIT 2003

FACT SHEET NUMBER 2

REFUGEE LAW TIMELINE

1976	First Vietnamese refugees arrive by boat.
1977	Australian Ethnic Affairs Council established.
1978	Galbally Report on migrant programs and services. Determination of Refugee Status Committee set up.
1979	Community Refugee Settlement Scheme begins.
1981	Assisted passages to end, except for refugees. Special Humanitarian Program begins.
1983	Remaining distinctions between 'British' and 'aliens' ended, both becoming 'non-citizens'.
1984	The 'Blainey debate' on Asian immigration. National Population Council established. Residence requirement for citizenship reduced to two years.
1987	Office of Multicultural Affairs established within the Department of the Prime Minister and Cabinet.
1988	FitzGerald Report on immigration policy: <i>Immigration – A Commitment to Australia</i> .
1989	<i>Chan Yee Kin v Minister For Immigration And Ethnic Affairs</i> – High Court articulates the “real chance” test for well-founded fear of persecution. New migration regulations reduce ministerial discretion under the <i>Migration Legislation Amendment Act</i> . National Agenda for a Multicultural Australia launched. Immigration Review Tribunal established. Second lot of boats containing Tiananmen Square refugees arrives.

1990	<p>Australian population passes 17 million.</p> <p>Chinese nationals resident at 20 June 1989 to be allowed to remain for four years as temporary residents.</p>
1991	<p>Start of major ministerial consultations with community groups on settlement needs.</p> <p>National Population Council report, <i>Population Issues and Australia's Future</i>.</p> <p>Public Accounts Committee report on the business migration program.</p>
1992	<p>Settlement Advisory Council established.</p> <p>Parliamentary Joint Standing Committee report, <i>Australia's Refugee and Humanitarian System</i>.</p> <p><i>Migration Amendment Act</i> extends government's powers of detention.</p> <p><i>Migration Reform Act</i> stops review of migration decisions under the <i>Administrative Decisions (Judicial Review) Act</i> and excludes grounds of review such as natural justice, unreasonableness, relevant and irrelevant considerations and bad faith.</p> <p><i>Chu Kheng Lim</i> case on legality of detention.</p> <p><i>Migration Amendment Act (No. 4)</i> limits amount of compensation payable for illegal detention of migrants to \$1 a day.</p>
1993	<p>Memorandum of Understanding between Australia and China on refugees.</p> <p>Refugee Review Tribunal commences hearings.</p>
1995	<p><i>Minister for Immigration, Local Government and Ethnic Affairs v Respondent A</i> case on Chinese one-child policy - Federal Court rules that refugee status can be based on being a member of a group affected by a government fertility control policy.</p> <p>In response the <i>Migration Legislation Amendment Bill (No.3)</i> attempted to remove fertility policies as a basis for refugee claims. It was allowed to lapse, however when the decision was reversed by the Full Federal Court, a result upheld by the High Court in <i>Minister for Immigration v A&B</i>.</p> <p><i>Minister for Immigration and Ethnic Affairs v Ah Tin Teoh</i> holds that ratification of a treaty gives rise to a legitimate expectation that government decisions will comply with the terms of that treaty, even where it has not been incorporated into domestic law through legislation.</p> <p><i>Administrative Decisions (Effect of International Instruments) Bill 1995</i> aims to</p>

	counter <i>Teoh</i> and remove any legitimate expectation that may have been created by the ratification of a treaty. This bill is not passed.
1996	Federal Coalition government elected.
1997	<i>Administrative Decisions (Effect of International Instruments) Bill 1997</i> again aims to counter <i>Teoh</i> and remove legitimate expectations based on treaty ratification. It is not passed.
1998	HREOC report, “Those who’ve come across the seas: detention of unauthorised arrivals.”
1999	<p><i>Administrative Decisions (Effect of International Instruments) Bill 1999</i> again attempts to counter <i>Teoh</i> and remove legitimate expectations based on treaty ratification, but is not passed.</p> <p>Temporary Protection Visa class is introduced, limiting unauthorised onshore applicants to applying for a three year Temporary Protection Visa rather than a Permanent Protection Visa.</p> <p>Temporary Safe Haven Visa class introduced for people who have been displaced from their place of residence, cannot reasonably return and are in grave danger of their personal safety for related reasons. The Kosovar Safe Haven Visa is also introduced to cater for a group of Kosovar refugees the Australian government had agreed to offer protection to.</p>
2000	Senate Legal And Constitutional Committee Inquiry Report “A Sanctuary Under Review: An Examination of Australia’s Refugee Humanitarian Determination Processes”.
2001	<p><i>Migration Amendment (Excision from Migration Zone) Act</i> <i>Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act</i> <i>Border Protection (Validation and Enforcement Powers) Act</i></p> <p>These Acts, together with others related to them and passed at the same time (see below), are intended to discourage unauthorised entry into Australia, deter people smugglers and increase the legal response to people arriving in Australia unlawfully. Areas to the north of the mainland that were previously part of Australia’s migration zone are excised (excised territories). They generally make</p>

	<p>offshore applicants who have spent more than 7 days in a country in which they could have sought and obtained protection ineligible for refugee or special humanitarian visas and only eligible for the new Secondary Movement Declaration (Temporary). They also restrict onshore applicants who have spent 7 days in a country where they could have sought protection to temporary protection visas and prevent them obtaining permanent protection visas.</p> <p>Another new class of visa was introduced - the Secondary Movement Offshore Entry (Temporary) is available for people who have landed in the excised territories and only allows the holder to apply for temporary protection visas.</p> <p><i>Migration Legislation Amendment (Judicial Review)</i> introduces privative clause to s.474 of the <i>Migration Act</i>, narrowing the basis on which some decisions made under the Act, such as those on refugee status, could be challenged in Courts.</p> <p>A definition of persecution as “serious harm to the person” and “systematic and discriminatory conduct” and “predominant” reason was also added to the <i>Migration Act</i>, a higher threshold than the one proposed by the Federal Court in <i>Ahmadi v Minister for Immigration and Multicultural Affairs</i> and <i>Kord v Minister for Immigration and Multicultural and Indigenous Affairs</i>.</p>
2002	<p><i>Minister for Immigration and Multicultural Affairs v Khawar</i> – the High Court affirmed that, in the definition of ‘refugee’, the serious harm involved in persecution may be perpetrated by non-State agents, and that the State’s only involvement may be the failure to provide protection. This case involved a Pakistani woman who suffered serious and prolonged domestic violence, and who was refused assistance by the police despite appealing for their help.</p>
2003	<p><i>S157/2002 v Commonwealth of Australia</i> – High Court states that the privative clause cannot prevent the Court reviewing in the <i>Migration Act</i> decisions affected by jurisdictional error.</p>

Information from Jupp J and Kabala M, *The Politics of Australian Immigration* (1993) AGPS and with thanks to Dr Mary Crock and Louise Pounder for their advice and contribution.