EXPEDITED PROCESSING OF ASYLUM SEEKERS: THE FUTURE OF REFUGEE STATUS DETERMINATION IN AUSTRALIA?

CHLOE FRANCESCA JOURDAIN

Bachelor of Laws (LLB)
Murdoch University

This thesis is presented for the Honours degree of Bachelor of Laws of Murdoch University
(November 2013)
DECLARATION

I, Chloe Francesca Jourdain, declare that this thesis is my own work and effort, except where acknowledged in this text. It has not been submitted anywhere for any other award.

Chloe Francesca Jourdain
Dated: 8 November 2013
ABSTRACT

2013 marks another year wrought with debate on asylum seekers and whether they are in fact refugees, fuelled by a growing number of boat arrivals and significant cost to the Australian government. The major political parties in Australia have been focused on how to ‘stop the boats’ and finding alternative ways to process claims for refugee status. Media reports since August 2012 have referred to an enhanced screening process whereby asylum seekers arriving by boat have not been given access to Australia’s refugee status determination procedures, returned to their country without sufficient assessment of any claim for asylum.

The Liberal-National Coalition indicated that they will introduce expedited processing of asylum seekers, modelled on the Detained Fast Track Processes in the United Kingdom. The expedited processing of asylum seekers is one alternative to standard refugee status determination procedures.

This thesis examines whether Australia can meet its international protection obligations under the Convention relating to the Status of Refugees and the Protocol Relating to the Status of Refugees if expedited processing procedures are introduced with the appropriate procedural safeguards. An overview of the expedited procedures in practice in the UK and the US is followed by a comparative analysis and assessment of whether procedures in the US and the UK meet international protection obligations and contain the appropriate procedural safeguards. Finally I have developed recommendations for Australia based on my analysis of the expedited procedures in the US and the UK. If expedited processing is to be implemented in Australia it should complement our current system, not replace it, and any proposal must contain comprehensive procedural safeguards.
# TABLE OF CONTENTS

## I IMMIGRATION AND BORDER CONTROL ................................................. 1
A *Australia's Current Refugee Status Determination System* .................. 3
B *Enhanced Screening* ........................................................................... 5

## II THEORETICAL BACKGROUND OF STATE SOVEREIGNTY AND REFUGEE LAW ......................................................................................... 8
A *Sovereignty* ............................................................................................ 8
B *Refugee Law* .......................................................................................... 10
1 *Modern Refugee Law* ............................................................................. 11
2 *Current Approaches to Refugee Law* ................................................. 12

## III INTERNATIONAL PROTECTION OBLIGATIONS ....................................................... 15
A *Refugee Convention and Refugee Protocol* ...................................... 15
1 *Article 33: Principle of Non-refoulement* ......................................... 17
2 *Article 31: Illegal Entry* ................................................................. 18
3 *Article 16: Access to the Courts and Legal Assistance* ............... 19
B *Asylum Procedures and Safeguards* ............................................... 19
1 *Manifestly Unfounded or Abusive, and Manifestly Well-Founded Cases* ................................................................. 22

## IV EXPEDITED PROCESSING ........................................................................... 23
A *United Kingdom* .................................................................................. 23
1 *Detained Fast Track* ............................................................................ 24
2 *Detained Non-Suspensive Appeals* .................................................. 24
3 *Detained Fast Track Process* ............................................................ 26
4 *Court Challenges* ................................................................................ 26
B *United States* ...................................................................................... 28
1 *Reports on Expedited Removal* ....................................................... 30

## V EXPEDITED PROCESSING: COMPARATIVE ANALYSIS ................................. 31
A *Speed and Detention* ......................................................................... 33
1 *Procedures in the UK and the US* ...................................................... 34
2 *In Reality* ............................................................................................ 35
3 *Removal from Expedited Processing: Flexibility and Recognition of Vulnerable Groups* ................................................................. 36
4 *Removal After a Negative Decision* ............................................... 38
5 *Reduced Costs* .................................................................................... 39
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>B Implementation and Training</td>
<td>39</td>
</tr>
<tr>
<td>1 Procedural Training</td>
<td>40</td>
</tr>
<tr>
<td>2 Cultural and Vulnerability Training</td>
<td>42</td>
</tr>
<tr>
<td>C Legal Assistance, Appeals and Provision of Information</td>
<td>43</td>
</tr>
<tr>
<td>1 Legal Aid and Assistance</td>
<td>43</td>
</tr>
<tr>
<td>(a) Interpreters</td>
<td>45</td>
</tr>
<tr>
<td>2 Right to Appeal</td>
<td>46</td>
</tr>
<tr>
<td>3 Provision of Information</td>
<td>48</td>
</tr>
<tr>
<td>VI PROCEDURAL SAFEGUARDS FOR EXPEDITED PROCEDURES</td>
<td>49</td>
</tr>
<tr>
<td>A Definition of Manifestly Unfounded or Abusive Asylum Claims</td>
<td>50</td>
</tr>
<tr>
<td>B The Problem with the Classification</td>
<td>53</td>
</tr>
<tr>
<td>C Manifestly Well-Founded Asylum Claims</td>
<td>55</td>
</tr>
<tr>
<td>D Conclusion</td>
<td>56</td>
</tr>
<tr>
<td>VII RECOMMENDATIONS FOR AUSTRALIA</td>
<td>56</td>
</tr>
<tr>
<td>A Allocation to an Expedited Procedure</td>
<td>58</td>
</tr>
<tr>
<td>1 A Sufficient Definition</td>
<td>58</td>
</tr>
<tr>
<td>2 Screening Interview</td>
<td>59</td>
</tr>
<tr>
<td>B Realistic Time Frames</td>
<td>60</td>
</tr>
<tr>
<td>C Putting Procedures into Practice</td>
<td>62</td>
</tr>
<tr>
<td>1 Training</td>
<td>62</td>
</tr>
<tr>
<td>2 Reforming the Border Security Culture and Changing Perceptions</td>
<td>64</td>
</tr>
<tr>
<td>D Ensuring Accountability</td>
<td>65</td>
</tr>
<tr>
<td>1 The Right to Review or Appeal is Crucial</td>
<td>65</td>
</tr>
<tr>
<td>2 Legal Assistance</td>
<td>66</td>
</tr>
<tr>
<td>3 Review of the Expedited Processing System</td>
<td>68</td>
</tr>
<tr>
<td>E Application of Complementary Protection</td>
<td>68</td>
</tr>
<tr>
<td>VIII CONCLUSION</td>
<td>69</td>
</tr>
<tr>
<td>IX BIBLIOGRAPHY</td>
<td>71</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

I would like to express my deepest gratitude to my supervisor, Anna Copeland, who agreed to supervise me on top of her other commitments and has provided me with continuous guidance and support.

I would also like to thank Mary-Anne Kenny for providing me with the topic for this paper and pointing me in the right direction.

Finally, I am very grateful to my parents and my brother for providing me with support and encouragement throughout this year.
### LEGEND

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accelerated</td>
<td>Used synonymously with ‘expedited’</td>
</tr>
<tr>
<td>Alien</td>
<td>In the US an alien is a reference to an asylum seeker</td>
</tr>
<tr>
<td>AHRC</td>
<td>Australian Human Rights Commission</td>
</tr>
<tr>
<td>Department</td>
<td>Department of Immigration and Border Protection (Cth)</td>
</tr>
<tr>
<td></td>
<td>(also previously known as Department of Immigration, Multicultural Affairs and Citizenship and Department of Immigration and Citizenship)</td>
</tr>
<tr>
<td>DFT</td>
<td>Detained Fast Track (UK)</td>
</tr>
<tr>
<td>DFT Exclusion</td>
<td>Detained Fast Track Suitability Exclusion Criteria (UK)</td>
</tr>
<tr>
<td>DFTP</td>
<td>Detained Fast Track Processes (UK)</td>
</tr>
<tr>
<td>DNSA</td>
<td>Detained Non-Suspensive Appeals (UK)</td>
</tr>
<tr>
<td>ELAP</td>
<td>Early Legal Advice Project (UK)</td>
</tr>
<tr>
<td>European</td>
<td><em>Convention for the Protection of Human Rights and Fundamental Freedoms on Human Rights</em></td>
</tr>
<tr>
<td>Flexibility</td>
<td>Detained Fast Track Processes Timetable Flexibility (UK)</td>
</tr>
<tr>
<td>Guidelines</td>
<td></td>
</tr>
<tr>
<td>GAO</td>
<td>General Accounting Office (US)</td>
</tr>
<tr>
<td>Global</td>
<td><em>Global Consultations on International Protection/ Third Track Consultation Note</em></td>
</tr>
<tr>
<td>INA</td>
<td><em>Immigration and Nationality Act of 1952 (US)</em></td>
</tr>
<tr>
<td>NAIU</td>
<td>National Asylum Intake Unit (UK)</td>
</tr>
<tr>
<td>NIA Act</td>
<td><em>Nationality, Immigration and Asylum Act 2002 (UK)</em></td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>NAM</td>
<td>New Asylum Model (UK)</td>
</tr>
<tr>
<td>Refugee Convention</td>
<td>Convention Relating to the Status of Refugees</td>
</tr>
<tr>
<td>Refugee Protocol</td>
<td>Protocol Relating to the Status of Refugees</td>
</tr>
<tr>
<td>RRT</td>
<td>Refugee Review Tribunal (Cth)</td>
</tr>
<tr>
<td>RSD</td>
<td>Refugee Status Determination</td>
</tr>
<tr>
<td>UMA</td>
<td>Unauthorised Maritime Arrival (Cth)</td>
</tr>
<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
</tr>
<tr>
<td>UNHCR Ex Com</td>
<td>Executive Committee of the High Commissioner’s Programme</td>
</tr>
<tr>
<td>USCIRF</td>
<td>United States Committee on International and Religious Freedoms</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>UKBA</td>
<td>United Kingdom Border Agency</td>
</tr>
<tr>
<td>US</td>
<td>United States of America</td>
</tr>
</tbody>
</table>
Australia has a long and often controversial history of restrictive immigration policies which have been covered by a number of writers. 1 2013 marks another year wrought with debate on asylum seekers and whether they are in fact refugees, fuelled by a growing number of boat arrivals and significant cost to the Australian government. The number of asylum seekers arriving by boat has drastically increased from only 985 in 2008/2009 to 25 173 in 2012/2013.2 The cost of the detention network for asylum seekers was $772.12 million in the 2010/2011 financial year.3

The focus of the major political parties in Australia has been on how to ‘stop the boats’ and finding alternative ways to process claims for refugee status.4 Media reports since August 2012 have referred to an enhanced screening process whereby asylum seekers arriving by boat have not been given access to Australia’s refugee status determination (‘RSD’) procedures and are returned to their country unless they explicitly raise a credible claim for asylum.5

---


5 ABC, ‘Calls to set law for asylum seeker interview process,’ ABC News (online), 6 December 2012 <http://www.abc.net.au/news/2012-12-06/calls-to-set-law-for-asylum-seeker-interview-process/4411522>; Rick Morton and Paul Maley, ‘About 600 Sri Lankans have been deported since August after claims ‘screened out,’’ The Australian (online), 05 December 2012.
The former Minister for Immigration and Citizenship Brendan O’Connor announced on 14 May 2013 that the then Gillard government would ‘commission a comprehensive review of the RSD process to ensure that Australia continues to meet its international obligations …’\(^6\) Soon after the same government, led by Kevin Rudd, announced that asylum seekers arriving by boat would no longer have their claim for refugee status processed in Australia; asylum seekers would be sent to Papua New Guinea or Nauru for processing and subsequent resettlement if they were found to be refugees.\(^7\) Tougher asylum policies were further announced when the Liberal-National Coalition was elected in September 2013. The Liberal-National Coalition has indicated that they will remove appeals to the Refugee Review Tribunal (‘RRT’), reintroduce temporary protection visas and introduce expedited processing of asylum seekers, modelled on the Detained Fast Track Processes (‘DFTP’) in the United Kingdom (‘UK’).\(^8\) If the Liberal-National Coalition remains true to their promise, it appears that claims for asylum in Australia will be assessed under expedited RSD procedures.

This thesis examines whether Australia can meet its international protection obligations under the *Convention relating to the Status of Refugees* (‘Refugee Convention’) and the *Protocol Relating to the Status of Refugees* (‘Refugee
if expedited processing procedures are introduced. To provide some context, this introductory chapter explains the standard RSD procedures in Australia and the recent process of enhanced screening. Expedited processing fits between standard RSD and enhanced screening procedures. Following this, Chapter 2 provides a theoretical background to the state and refugee law and establishes the basis from which an expedited procedure should be developed in Australia. In Chapter 3 I have discussed Australia’s international protection obligations under the Refugee Convention and the procedural safeguards which must be in place to ensure these obligations are adhered to.

Chapter 4 contains an overview of the expedited processing procedures which have been in practice in the UK and the United States of America (‘US’) for over a decade, followed by a comparative analysis and assessment of whether procedures in the US and the UK meet international protection obligations and contain the appropriate procedural safeguards in Chapter 5. Chapter 6 provides a separate consideration of the procedural safeguards recommended specifically for expedited procedures. Finally I have developed recommendations for Australia based on my analysis of the expedited procedures in the US and the UK.

A Australia’s Current Refugee Status Determination System

Australia’s immigration system includes procedures for border screening and RSD. RSD procedures begin with an application for a protection visa under section 36 of the Migration Act 1958 (Cth). Applicants that have a valid visa may prepare a claim for a protection visa and have the opportunity to present their case to a
Department of Immigration and Border Protection (‘Department’) official. Under s 65A of the *Migration Act 1958* (Cth) a decision must be made within 90 days. If a claim for a protection visa is rejected an applicant may appeal to the RRT.\textsuperscript{11} If an appeal to the RRT is unsuccessful, an applicant may have the RRT decision judicially reviewed if they can argue there has been an error in the decision-making. Boat arrivals, or unauthorised maritime arrivals (‘UMA’) as defined in s 5AA of the *Migration Act 1958* (Cth),\textsuperscript{12} are excluded from making an application for a protection visa\textsuperscript{13} unless the Minister believes it is in the public interest.\textsuperscript{14}

Complementary protection is another aspect of Australia’s RSD procedures that was introduced in 2012 to provide protection to a person found not to be a refugee under the *Refugee Convention* but who may be at ‘real risk of significant harm’ if returned to their home country.\textsuperscript{15} Significant harm may relate to arbitrary deprivation of life, death penalty, torture, cruel, inhuman or degrading treatment or punishment.\textsuperscript{16} Complementary protection is assessed with a protection visa application. If an applicant is found not to be a refugee they will be assessed against the complementary protection criteria.\textsuperscript{17}

While the standard RSD process is meant to provide a full assessment of an asylum application, recent statistics show that this system has issues with initial decision making. At the end of March 2013 the primary grant rate for irregular maritime arrivals (now classed as UAM) that arrived in 2011-2012 was 67%; the primary grant rate being protection visas granted after consideration of the initial application and...

\textsuperscript{11} *Migration Act 1958* (Cth) s 411(c).
\textsuperscript{12} Under s 5AA of the *Migration Act 1958* (Cth) a person is deemed to be an unauthorised maritime arrival if they entered Australia by sea at an excised offshore place.
\textsuperscript{13} *Migration Act 1958* (Cth) s 46A(1).
\textsuperscript{14} *Migration Act 1958* (Cth) s 46A(2).
\textsuperscript{15} *Migration Act 1958* (Cth) s 36(2)(aa).
\textsuperscript{16} *Migration Act 1958* (Cth) s 36(2A)(a)-(e).
interview. This figure jumped to 93.4% at the final processing stage including review. These statistics also reflect the periods from 2009-2010 and 2010-2011.¹⁸ David Manne, executive director of the Refugee and Immigration Legal Centre, commented that these statistics represent obvious flaws in initial decision making.¹⁹ Any review of Australia’s RSD procedures must take this issue into consideration and ensure that future developments in the area focus on improving initial decision making.

B Enhanced Screening

Border screening and entry interviews are typical for all people who arrive in Australia that do not have a valid visa.²⁰ For asylum seekers arriving by boat the entry interview was used to establish a person’s identity, why they had left their country and how they had travelled to Australia.²¹ If an asylum seeker generally indicated they had travelled to Australia to claim asylum and ‘might’ have a protection claim they were ‘screened in’ to RSD procedures and allowed to enter Australia.²² The Department’s policy specifically points out that the entry interview was not to be used for assessment of the merits of a protection claim.²³ However, media reports since December 2012 have referred to a ‘screening out’ or ‘enhanced screening’ interview, increasingly used in Australia since August 2012.²⁴ Under the

---


²¹ Ibid.

²² Ibid.


²⁴ ABC, above n 5; Morton and Maley, above n 5.
enhanced screening process an asylum seeker is interviewed by two officers and unless an asylum seeker explicitly raises a credible claim for asylum, they are ‘screened out’ and prevented from accessing RSD. The interview is informal, people may not be informed of their right to seek asylum and legal representation is only provided if an asylum seeker requests it (which is obviously problematic unless they are aware that legal representation is available). Parliamentary debate reveals that the ‘enhanced screening’ process and the power to remove asylum seekers is being used due to an increase in boat arrivals and a perception that people are travelling to Australia for ‘economic reasons as opposed to protection reasons.’ The Australian Human Rights Commission (‘AHRC’) has expressed grave concerns that asylum seekers subjected to the enhanced screening process were being returned to persecution with no written decision provided or a right to review. In addition the AHRC is afraid that asylum seekers may not be able to raise their needs for protection adequately in the brief screening interview. This concern is twofold considering the screening process may be used for ‘substantive assessment of claims …’

The enhanced screening process has specifically targeted arrivals from Sri Lanka. The former Minister for Immigration and Citizenship claimed that the 1029 Sri Lankans that had been returned to Sri Lanka between August 2012 and April 2013 did not engage Australia’s protection obligations and had no legal right to remain in

---


26 ABC, above 5; Morton and Maley, above n 5; Refugee Action Coalition Sydney, above n 5.

27 See Morton and Maley, above n 5.

28 Evidence to Legal and Constitutional Affairs Committee, Parliament of Australia, Canberra, 11 February 2013, 94, 154, (Martin Bowles).

29 AHRC, AHRC Snapshot Report, above n 25, 18.


Australia. The total number of Sri Lankan returns has since risen to 1300 at the end of August 2013. It would be presumed that, in order to determine whether an asylum seeker engaged Australia’s protection obligations, they would have to have their claim for asylum considered under the appropriate RSD procedures. However, no RSD processing had begun for asylum seekers who had arrived in Australia by boat since 13 August 2012 until March 2013. Therefore none of the Sri Lankan asylum seekers had their claim for protection assessed under RSD procedures.

At the end of 2012 a number of Sri Lankan Tamils were set to be deported back to Sri Lanka as a result of the enhanced screening process but instigated court action with the assistance of a lawyer, alleging that the former Minister of Immigration and Citizenship was going to return them to Sri Lanka without proper inquiry or cause. The legal action was discontinued after the Minister agreed to process their claims. The decision not to return the asylum seekers who were the subject of the legal challenge was labelled as an ‘operational decision …’ It is concerning that not all of the Sri Lankan asylum seekers have had access to legal assistance; if they had been able to challenge their removal they may not have been returned to Sri Lanka.

Media reports, Hansard and statements by the Australian Human Rights Commission currently provide the most current information to the public regarding the ‘enhanced

34 Evidence to Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, Canberra, 27 May 2013, 33 and 47 (Martin Bowles), 107 (Alison Larkins) and 115 (Wendy Southern).
36 Evidence to Legal and Constitutional Affairs Committee, Parliament of Australia, Canberra, 11 February 2013, 154 (Martin Bowles).
screening’ procedures. The Department has yet to publicly release their procedures. There have been consistent requests to the government to reveal the processes that are currently in place and for these processes to be set out in law.\textsuperscript{37} There is no doubt that the enhanced screening process does not provide a full and comprehensive consideration of a claim for asylum however the process still seems to be continuing.\textsuperscript{38} The federal government remains focused on finding an alternative solution to standard RSD procedures. Expedited processing is one alternative that the Liberal-National Coalition has indicated they will introduce in the near future.

Before analysing expedited processing procedures in the US and the UK I have sought to offer an explanation for the state’s preference for border control, starting with the notion of state sovereignty. The term ‘state’ refers to ‘a body of people occupying a definite territory and organised under one... government.’\textsuperscript{39} I have also discussed the development of refugee law which will provide the basis from which expedited processing procedures should be implemented in Australia.

\textbf{II THEORETICAL BACKGROUND OF THE STATE AND REFUGEE LAW}

\textit{A State Sovereignty}

The state has been innately occupied with the concept of state sovereignty; the state has sought to exercise control over the territory it occupies and who enters through its borders.\textsuperscript{40} The concept of sovereignty has been around for many centuries and is often associated with Jean Bodin, Thomas Hobbes and the \textit{Peace of Westphalia} 1648. Bodin defined sovereignty as ‘the absolute and perpetual power of a

\textsuperscript{37} Australian Associated Press, above n 35.
\textsuperscript{38} AHRC, \textit{AHRC Snapshot Report}, above n 25, 18. The AHRC recommended for the enhanced screening process to be discontinued in October 2013, suggesting it is still in effect.
\textsuperscript{39} Susan Butler, \textit{Macquarie Dictionary} (Macquarie Dictionary Publishers, 5\textsuperscript{th} ed, 2009); as opposed to the term ‘State’ referring to ‘one of the divisions or regions of a country, each more or less independent as regards internal affairs, which together make up a federal union, as in the Commonwealth of Australia’ such as the State of Western Australia.
\textsuperscript{40} Vrachnas et al, above n 1, 301.
commonwealth... the greatest power to command.\textsuperscript{41} Sovereignty is perpetual as Bodin argued for an absolute sovereign; a state may be a monarchy, aristocracy or a democracy but sovereignty should be indivisible.\textsuperscript{42} Hobbes went further with his idea of the ‘social contract.’ The social contract was derived from the notion that in the state of nature ‘the life of man [was] solitary, poor, nasty, brutish and short’ as there was no political order.\textsuperscript{43} In order to regulate social interactions a sovereign state should be created.\textsuperscript{44} Hobbes argued that the people will consent to be ruled as long as the ruler protects them; if the ruler can no longer protect their people the state would be dissolved.\textsuperscript{45}

State sovereignty and the European state system as it exists today is attributed to the treaties that established the Peace of Westphalia in 1648.\textsuperscript{46} The treaties documented the concept of state sovereignty as the state having sovereign rule over its territory and the principle of non-intervention of one state into the internal affairs of another.\textsuperscript{47} The treaties were influenced by the Dutch jurist Hugo Grotius who wrote extensively about an international law that could be applied universally, irrespective of religious differences.\textsuperscript{48} While the notion of state sovereignty is often regarded as the basis of border control,\textsuperscript{49} James Nafziger quite interestingly points out that Grotius believed there was no absolute right to control state borders; states must provide residence for

\textsuperscript{44} Ibid ch 17.
\textsuperscript{45} Ibid ch 29 [23].
\textsuperscript{47} Ibid 325.
\textsuperscript{48} Ibid.
\textsuperscript{49} Ibid 164.
refugees. This has been linked to the notion of state responsibility and also echoes Hobbes’ idea of the social contract. As a state possesses sovereignty over its territory it has a responsibility to protect its inhabitants. However, where a state fails to protect its inhabitants, another state is obliged to provide protection if it is sought by the former state’s inhabitants. In addition to the notion of state responsibility, the doctrine of humanitarian intervention has provided justification for breaching state sovereignty. Hathaway also contends that, ‘International human rights law is fundamentally a means of delimiting state sovereignty.’ States do have sovereign control over their territory but it is not unconditional.

B Refugee Law

Immigration laws permitting entry into a state are usually divided into two spheres; migration law and refugee law. While refugee law is situated within the domestic sphere it is first and foremost a branch of international law, contemporarily derived from the Refugee Convention and the Refugee Protocol with the state responsible for creating the procedures to give effect to refugee law. Unlike migration law where the state decides if a person can enter their country generally based on the skills or attributes they can offer, refugee law is concerned with what the state can do for a person seeking asylum. If viewed in this way it would seem that the state should simply offer protection to a person seeking asylum once it is established that they have a legitimate claim for asylum. However, the general preoccupation of the state with border control has complicated the practice of refugee law.

51 Garner, Ferdinand and Lawson, above n 45, 326.
52 Ibid 325.
55 Vrachnas et al, above n 1, xix.
Modern Refugee Law

The Refugee Convention was initially created to protect European refugees as a result of World War Two. Following its creation the main concern for refugees was proving their claim and for states to determine whether refugee status should be granted. The Refugee Protocol expanded the Refugee Convention’s scope by removing geographical and time limits in 1967. Since then refugee law has been used as a way to deal with disruptions to regular international migration, complicated by the states deliberation over who should be afforded refugee status, what rights should be afforded to refugees and whether they should be resettled to a third country. A number of countries have installed punitive policies due to an increase in irregular migration. This has been evident in Australia due to community concern surrounding asylum seekers arriving by boat.

Positivism has been used to explain the states reluctance to recognise any right to asylum. In the eyes of positivism, international law is ‘an abstract system of rules which can be identified, objectively interpreted, and enforced,’ distinct from any political argument. A law is legitimate depending on its source, not on its merit. Positivism sees the legislature as a legitimate source of law as its power is derived from the people. Positivism provided an excuse for the state to separate state law from any human rights obligation, acting hand in hand with state sovereignty; states

---

58 Hathaway, The Rights of Refugees under International Law, above n 56, 3.
59 Crock and Berg, above n 1, 14.
61 Chimni, above n 60, 352.
could maintain control of their borders, irrespective of any obligation to provide protection to asylum seekers.\footnote{Lambert, above n 54, 344-346; Chimni, above n 60, 350.}

However, it could also be argued that international treaties are a legitimate source of law. In Australia the executive agrees to be bound by an international treaty and then the legislature implements the treaty into domestic law. State sovereignty is restricted by obligations under those treaties and has been slowly eroding as states intervene in the affairs of other states. This has been contributed to by the rise of non-state actors; the US invaded Afghanistan and Iraq after the World Trade Centres were bombed by the terrorist group al-Qaida.\footnote{Daniel Swanwick, ‘Foreign Policy and Humanitarianism in US Asylum Adjudication: Revisiting the Debate in the Wake of the War on Terror’ (2006-2007) 21(1) Georgetown Immigration Law Journal 129, 147-148.} Once dominated by positivism, in the past two decades refugee law has become increasingly based on human rights\footnote{Helene Lambert, n 54, 344, 347-348.} or humanitarianism.\footnote{Swanwick, above n 63, 130.}

2 Current Approaches to Refugee Law

Helene Lambert provided an overview of the past and current international approach to refugee law,\footnote{Lambert, above n 54, 347-349.} and found that the human rights approach had become dominant in international refugee law with the focus on ‘rules as applied by states and relevant international organisations.’\footnote{Ibid 344.} Due to an increase in transnational activity, Lambert encourages a transnational or participatory approach when dealing with refugee policies and law that is culturally sensitive, encompassing all related actors including refugees.\footnote{Ibid 349.} Similarly Daniel Swanwick considered whether foreign policy or humanitarianism should be the base from which asylum seeker determinations should be made.\footnote{Swanwick, above n 5, 129.} Swanwick argues that foreign policy and humanitarian pressures should both be considered but, ‘If faced with a choice between a missed opportunity
to score geopolitical points on the one hand, and the risk of *refouling*\(^\text{70}\) bona fide refugees fleeing one’s allies on the other hand, states should err on the side of humanitarianism.\(^\text{71}\) Creating an asylum policy on humanitarian terms does not prevent the inclusion of political issues but ensures that asylum seekers are not used as political tools.\(^\text{72}\) This conveys with it a powerful sentiment; in Australia asylum seeker policies have indeed become a political tool, with little doubt that it has been at the expense of legitimate refugees. Humanitarianism should be the dominant consideration within an asylum adjudication process.\(^\text{73}\) However, the process would be even more effective if it was developed mindful of the fact that the state will inevitably consider foreign policy issues.

On the other hand, scholars such as Jack Garvey and James Hathaway believe that a humanitarianism approach to refugee law will not work. Garvey defines humanitarianism as ‘the attempt to affect events by asserting the claims of individual human rights …’ He argues that humanitarianism in refugee law creates a tension between the principle of sovereignty and relations with other states as it concerns the movement of people.\(^\text{74}\) Hathaway contends ‘that neither a humanitarian nor a human rights vision can account for refugee law …’\(^\text{75}\) Refugee law in humanitarian terms would see a state provide protection to those seeking asylum without questioning why,\(^\text{76}\) while human rights cannot be the basis of refugee law considering the *Refugee Convention* does not even contain the right to seek asylum.\(^\text{77}\) Hathaway

---

\(^{70}\) The duty of *non-refoulement* is contained in art 33 of the *Refugee Convention* and will be discussed below. *Refoulement* refers to the act of returning an asylum seeker to a country where they may suffer persecution.  

\(^{71}\) Swanwick, above n 63, 148.  

\(^{72}\) Ibid.  

\(^{73}\) Ibid 149.  


\(^{75}\) Hathaway, *A Reconsideration of the Underlying Premise of Refugee Law*, above n 57, 130.  

\(^{76}\) Ibid.  

\(^{77}\) Ibid 148; The *Refugee Convention* provides protection for refugees but it does not contain a human right to seek asylum.
supports the eradication of the international formal legal obligations in favour of a regional burden sharing regime to ensure that ‘humane concern …’ is upheld. Hathaway built further upon this proposal with Robert Neve in 1997, recognising that states appear committed to protecting refugees but in fact aim to avoid their international protection obligations. It is not my intention to consider this proposal, I will still proceed with reference to the Refugee Convention, but it does question its effectiveness if states will not actually adhere to it. Chimni found that Hathaway and Neve’s proposal ended up lending itself to restrictive state practices. But as Harvey pointed out in his survey of the tensions in modern refugee law debate, Hathaway has ‘always emphasized the need for a rights-regarding regime.’ Harvey sought to remind participants in the refugee law debate to find the middle ground between the reality of the state acting in its own interests and the ideal approach to provide protection to refugees.

James Hathaway ultimately advocates for a rights-regarding regime, ‘refugee law is not immigration law, but is rather a system for the surrogate or substitute protection of human rights.’ I intend to develop recommendations for Australia from this basis, recognising the reality of state interests as well as the importance of offering protection to those in need. Australia’s immigration policy has seen too much emphasis placed on border security and the ‘politics’ of seeking asylum. As Kirby J said in Minster for Immigration and Multicultural Affairs v Khawar, ‘the [Refugee] Convention is one of several important international treaties designed to redress

---

78 Hathaway, A Reconsideration of the Underlying Premise of Refugee Law, above n 57, 183.
80 Chimni, above n 60, 363.
82 Ibid 103.
83 Hathaway, The Rights of Refugees under International Law, above n 56, 5.
“violations of basic human rights, demonstrative of a failure by state protection.”84 A state is unable to prevent all human rights violations in other states, therefore assuming the responsibility for those who no longer have protection from their state by becoming party to the Refugee Convention. Australia should develop a refugee policy with the appropriate procedural safeguards that reflect our commitment to the Refugee Convention. The Australian Human Rights Commission believes that it is possible for a state to fulfil its responsibilities and obligations under human rights treaties while also protecting its borders.85 I will examine whether Australia can protect its borders and implement expedited processing procedures for asylum seekers which meet Australia’s international protection obligations if the appropriate procedural safeguards are in place.

III INTERNATIONAL PROTECTION OBLIGATIONS

A Refugee Convention and Refugee Protocol

International treaties are one way a state may agree to restrict their sovereignty. Australia is party to the Refugee Convention and the Refugee Protocol.86 The Refugee Convention is implemented into Australian law by s 36(2)(a) of Migration Act 1958 (Cth) which provides ‘that a protection visa is to be granted where the Minister is satisfied Australia has protection obligations under the Convention, as amended by the Protocol.’ A refugee is defined in Article 1A(2) of the Refugee Convention ‘as a person who has been forced to leave their country in order to escape persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion … ’ The United Nations High Commissioner for

---

Refugees (‘UNHCR’) has been given the mandate to supervise the Refugee Convention and the Executive Committee of the High Commissioner’s Programme (‘UNHCR Ex Com’) supervises the UNHCR. At the domestic level, procedures for determining refugee status must meet international obligations under the Refugee Convention and be developed in line with conclusions provided by the UNHCR Ex Com on international protection standards (‘UNHCR Ex Com Conclusions’).

Article 31(1) of the Vienna Convention on the Law of the Treaties states that treaties must be interpreted in ‘good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.’ In Guinea-Bissau v Senegal, Weeramantry J indicated that the preamble is a ‘principal and natural source from which indications can be gathered of a treaty’s objects and purposes.’ The preamble to the Refugee Convention affirms that ‘human beings shall enjoy fundamental rights and freedoms without discrimination,’ as expressed by the Charter of the United Nations and the Universal Declaration of Human Rights, and notes the United Nations concern for refugees. Australia therefore should interpret the Refugee Convention giving ‘refugees the widest possible exercise of fundamental rights and freedoms …’

---

87 Statute of the Office of the United Nations High Commissioner for Refugees, GA Res 428(v), UN GAOR, Supp No 20, UN Doc A/1775 (14 December 1950) annex, para 8; Refugee Convention, art 35.
89 UNHCR, Asylum Processes (Fair and Efficient Asylum Procedures), Global Consultations on International Protection, 2nd mtg, UN Doc EC/GC/01/12 (31 May 2001) (‘Global Consultation Note’)[2].
91 Arbitral Award of 31 July 1989 (Guinea Bissau v Senegal) [1991] ICJ Rep 53.
I have limited my reference to Australia’s international obligations under the *Refugee Convention* to Article 33, Article 31 and Article 16(1). These obligations are of prime importance and Australia should strive to adhere to them should expedited procedures be introduced.

1 Article 33: Principle of Non-refoulement

The core of refugee protection obligations is the principle of *non-refoulement*, contained in Article 33 of the *Refugee Convention*.\(^{94}\) The principle of *non-refoulement* puts an onus on a country not to return a refugee, or those who have not had their status formally declared, to a country where they may be persecuted. It is paramount that a legitimate refugee is not returned to further persecution in a third country or their own country, as reflected by Article 42(1) of the *Refugee Convention* and Article VII(1) of the *Refugee Protocol* which state that no reservations are permitted to Article 33 of the *Refugee Convention*. Generally, states have recognised that the principal of *non-refoulement* comes into effect when asylum seekers present themselves at the border,\(^ {95}\) ‘irrespective of whether the refugee is in the national territory of the state concerned.’\(^ {96}\)

Guy Goodwin-Gill traces the development of the principle of *non-refoulement* to John Rawls’ concept of natural duty. The principle of *non-refoulement* presupposes ‘a duty of helping another when he is in need or jeopardy, provided that one can do without excessive risk or loss to oneself …’\(^ {97}\) Rawls refers to Kant’s ‘duty of mutual aid;’ if we do not help others when they are in need, they in turn may not help us

---

\(^ {94}\) *Refugee Convention* art 33(1).


when we require it. The principle of non-refoulement must be considered at every stage of any asylum procedure.

Angus Francis stresses the importance of implementing positive measures to ensure that the principle of non-refoulement is actually adhered to, rather than having an asylum procedure that appears to meet international obligations ‘in theory’.98

2 Article 31: Illegal Entry

Another important international obligation contained in the Refugee Convention is Article 31 which provides that penalties should not be imposed on asylum seekers on account of their illegal entry.99 Refugees may not be able to obtain the right documents prior to their departure from the persecuting country, considering that the government which grants the travel documents is often the same government from which a refugee is fleeing.100 It has been recognised that no penalty should result purely due to the fact they did not have any, or the correct, documents.101 However, the UNHCR Ex Com Conclusion No. 44 (XXXVII) – 1986 Detention of Refugees and Asylum-Seekers (‘Conclusion No. 44’) provided that detention may be used to verify an asylum seeker’s identity, where an asylum seeker has destroyed travel documents or if they have used fraudulent documents to mislead state authorities.102

---


99 Refugee Convention art 31(1).


101 Global Consultation Note, UN Doc EC/GC/01/12, [35].

102 Executive Committee of the High Commissioner’s Programme, Conclusion No. 44 (XXXVII) - 1986 Detention of Refugees and Asylum-Seekers (13 October 1986) [b].
3 Article 16: Access to the Courts and Legal Assistance

The final obligation I will consider is Article 16 of the *Refugee Convention* which provides that refugees should have free access to the courts and legal assistance. Again, a state is party to the *Refugee Convention* or the *Refugee Protocol* for the purpose of protecting refugees; Article 16 allows asylum seekers to reinforce this commitment by having the opportunity to prepare their application for refugee status with legal assistance and to have their decision reviewed by an independent body.

B Asylum Procedures and Safeguards

‘Asylum procedures are guided by or built around responsibilities derived from … the [Refugee Convention], international human rights law and humanitarian law, as well as relevant [UNHCR Ex Com Conclusions].’ The *Refugee Convention* does not contain specific provisions for the determination of refugee status, effectively leaving it up to each state to establish their own procedure. The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (‘UNHCR Handbook’) suggests that ‘the procedures used to determine asylum and torture protection claims are sufficient if they meet their intended purpose, which is to protect eligible claimants from forced return …’ If this statement is considered alone it mirrors a consequentialist view that the ends justify the means; as long as an asylum seeker is not subject to *refoulement*, any sort of RSD procedure is acceptable. This creates a potential issue as other rights afforded to asylum seekers in the *Refugee Convention* may be impinged on. However it is arguable that returning an asylum seeker to a country where they may continue to be persecuted is, at the end of the day, the most...

---

103 *Refugee Convention* art 16(1).
104 *Refugee Convention* art 16(2).
105 Global Consultation Note, UN Doc EC/GC/01/12, [2].
important thing to prevent. RSD procedures must meet the duty of *non-refoulement*, without degradation of any other obligation.

While UNHCR Ex Com Conclusions are not binding on states, they do create an ‘*opinio juris …*’ and provide the state with a ‘sense of legal obligation with which states may or may not approach the problem of refugees.’ The Canadian Federal Court of Appeal indicated that the UNHCR Ex Com Conclusions should be given significant weight as they are ‘designed to go some way to fill the procedural void in the Convention itself.’

The court used Article 35 of the *Refugee Convention* to support this statement, arguing that states have undertaken to cooperate with and assist the UNHCR in regards to the application of the *Refugee Convention*.

UNHCR Ex Com *Conclusion No. 8 (XXVIII) – 1977 Determination of Refugee Status* (‘*Conclusion No. 8*’)

and UNHCR Ex Com *Conclusion No. 30 (XXXIV) - 1983 The Problem of Manifestly Unfounded or Abusive Application for Refugee Status or Asylum* (‘*Conclusion No. 30*’) contain procedural directions to ensure that a state’s obligations under the *Refugee Convention* are met. *Conclusion No. 8* provides basic procedural requirements for the determination of refugee status in 1977, while *Conclusion No. 30* recommended three specific procedural safeguards for manifestly unfounded or abusive asylum claims in 1983.

I recognise and agree that the UNHCR Ex Com has not provided comprehensive guidance and acknowledge that states are often reluctant to accept detailed procedures.

---

109 Ibid.
111 Executive Committee of the High Commissioner’s Programme, *Conclusion No. 30 (XXXIV) - 1983 The Problem of Manifestly Unfounded or Abusive Application for Refugee Status or Asylum* (20 October 1983).
112 *Conclusion No. 8 [e].*
113 *Conclusion No. 30 [e].*
114 Francis, *The Role of Legislative, Executive and Judicial Mechanisms in ensuring a Fair and Effective Asylum Process*, above n 98, 13-17.
same time, the UNHCR Ex Com Conclusions have been produced as a result of the UNHCR Ex Com’s mandate to assist the UNHCR.\textsuperscript{115} The UNHCR Ex Com’s Conclusions should be considered by Australia as they provide rules of best practice to follow which are closely aligned with the \textit{Refugee Convention}.

Further to this, guidance developed by the UNHCR should also be considered when creating RSD procedures. At the 2001 Global Consultations on International Protection the UNHCR produced a note entitled ‘\textit{Asylum Processes (Fair and Efficient Asylum Procedures)}’ (‘\textit{Global Consultation Note}’) which recognised the need to examine ‘the purpose and content of asylum procedures …’ and identified what constitutes fair and efficient asylum procedures in order for states to adhere to international refugee protection principles.\textsuperscript{116} All asylum seekers must be granted access to fair and efficient procedures for determining their protection needs to prevent the risk of \textit{refoulement}.\textsuperscript{117} The \textit{Global Consultation Note} is not to be regarded as a rule of law but in \textit{QAAH of 2004 v Minister for Immigration and Multicultural and Indigenous Affairs} the court discussed that documents produced by the UNHCR should be taken into account as they are ‘documents prepared by experts published to assist States (including Australia) to carry out their obligations under the Convention.’\textsuperscript{118} To encourage uniform development of the \textit{Refugee Convention} it is important for states to consider information developed by the UNHCR and the UNHCR Ex Com.\textsuperscript{119}

\textsuperscript{115} Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, UN Doc E/RES/672(XXV), [2]. Terms of reference for the Executive Committee of the United Nations Refugee Fund, the former UNHCR Ex Com, were contained in \textit{International Assistance to Refugees within the Mandate of the United Nations High Commissioner for Refugees}, GA Res 1166(XII), 12th sess, 723\textsuperscript{rd} plen mtg, UN Doc GA/RES/1166(XII) (26 November 1957) [5].

\textsuperscript{116} \textit{Global Consultation Note}, UN Doc EC/GC/01/12, [5].

\textsuperscript{117} \textit{Global Consultation Note}, UN Doc EC/GC/01/12, [43].


\textsuperscript{119} This view was also expressed by the AHRC in AHRC, \textit{A Last Resort?} above n 85, ch 4 [4].
C Manifestly Unfounded or Abusive, and Manifestly Well-Founded Cases

In Conclusion No. 30 the UNHCR Ex Com considered that applications for asylum which are ‘so obviously without foundation as not to merit full examination at every level of the procedure …’ may be dealt with expeditiously.\textsuperscript{120} Expedited procedures can be a useful tool for manifestly well-founded cases as well as manifestly unfounded or abusive asylum cases, provided that the appropriate procedural safeguards are in place.\textsuperscript{121}

Manifestly unfounded or abusive asylum cases are ‘to be defined as those which are clearly fraudulent or not related to the criteria for the granting of refugee status …’\textsuperscript{122} It was recognised that three specific safeguards were necessary including that an applicant should be given a personal interview by a fully qualified individual from the appropriate agency, the application must be established as manifestly unfounded or abusive by that agency and the applicant must have a right to review before removal.\textsuperscript{123} At the other end of the scale, manifestly well-founded applications for asylum may not warrant a full and proper examination such as an interview if it is expected that a positive decision will be made.\textsuperscript{124} In addition, appeal rights may be simplified.\textsuperscript{125} Standard RSD procedures are inherently more comprehensive when compared with expedited procedures; I contend that in an expedited system it is even more important to ensure that procedural safeguards are in place.

Angus Francis considered the administrative, judicial and legislative requirements for fair and effective RSD procedures extensively in his doctorate and I cannot hope

\textsuperscript{120} Conclusion No. 30 [d].
\textsuperscript{121} Global Consultation Note, UN Doc EC/GC/01/12, [50(d)].
\textsuperscript{122} Conclusion No. 30 [d].
\textsuperscript{123} Conclusion No. 30 [e].
\textsuperscript{124} Global Consultation Note, UN Doc EC/GC/01/12, [50(h)].
\textsuperscript{125} Global Consultation Note, UN Doc EC/GC/01/12, [42].
to go into such deep consideration as his. I will focus on the procedural safeguards necessary for fair and effective expedited procedures. I will evaluate whether expedited procedures in the United Kingdom and the United States have the appropriate procedural safeguards to ensure they meet their international protection obligations as discussed above.

IV EXPEDITED PROCESSING

Expedited processing procedures are aimed at processing an asylum claim quickly and have been introduced in the United Kingdom and the United States to deal with a high number of applications for refugee status. This chapter will provide an overview of the current expedited processing procedures in the UK and the US.

A United Kingdom

The United Kingdom has signed and ratified the Refugee Convention and the Refugee Protocol. An early version of the DFTP was introduced in the UK at a time when an unprecedented number of asylum seekers were arriving at the border; in 2002 asylum applications peaked at 84,132. In 2007 the New Asylum Model (‘NAM’) was announced, which was intended to remove ‘a higher percentage of people who did not qualify for asylum…’ and to enable a faster decision for those who did have a legitimate claim for asylum. Asylum seekers arriving in the UK undertake an entry screening interview upon arrival at the border and are placed into

---

126 Francis, The Role of Legislative, Executive and Judicial Mechanisms in ensuring a Fair and Effective Asylum Process, above n 98.
one of five asylum procedures which include the DFTP. The DFTP was to be used where a decision could be made quickly and is split into the Detained Fast Track (‘DFT’) and Detained Non-Suspensive Appeals (‘DNSA’). I note that the DFTP are mostly contained in policy documents, rather than fully set out in legislation.

1 Detained Fast Track

After the initial screening interview, where it appears that an asylum application can be quickly assessed, the asylum seeker will be diverted into the DFT. All claims for asylum must be referred to the National Asylum Intake Unit (‘NAIU’) along with any reasons that have led to the view that the application can be quickly assessed. The UK’s Immigration Policy holds that ‘there is a general presumption that the majority of asylum applications are ones on which a quick decision may be made …’ unless evidence suggests otherwise or the case is recognised as not suitable for detention. A quick decision may not be possible ‘where it is reasonably foreseeable that further enquiries are necessary …’ or the level of consideration or translations required cannot be done within the appropriate time. The referring officer must send the screening interview form if requested and answer any questions if NAIU require clarification.

2 Detained Non-Suspensive Appeals

The DNSA process deals with asylum claims that appear to be ‘clearly unfounded…;’ ‘the case officer must be satisfied that the claim cannot, on any

---

131 Ibid [6].
134 Ibid [2.2].
135 Ibid [3].
legitimate view, succeed.¹³⁶ A UK Border Agency (‘UKBA’) policy document states that the term ‘clearly unfounded’ is to be applied equally with ‘manifestly unfounded,’¹³⁷ citing the jointly heard case of *R v Secretary of State for the Home Department, ex parte Thangarasa; R v Secretary of State for the Home Department, ex parte Yogathas (‘Thangarasa and Yogathas’)*¹³⁸. The House of Lords discussed the use of the phrase ‘manifestly unfounded’ in the context of the UK and found that the expression is to be defined as a claim that is ‘so clearly without substance [it] would be bound to fail.’¹³⁹

The most significant aspect of the DNSA is that under s 94 of the *Nationality, Immigration and Asylum Act 2002* (UK), c 41 (‘NIA’) the right to an in-country appeal on asylum claims is removed where cases are ‘clearly unfounded.’ The applicant may reside in the list of designated states in s 94(4) of the NIA or, if outside of one of the designated states, their claim must be clearly unfounded under s 94(2) of the NIA. Countries contained in the list of designated states must meet s 94(5) of the NIA; in general that state or part must have no serious risk of persecution of persons entitled to reside in that state and returning an asylum seeker to that state will not contravene the UK’s obligations under the *Convention for the Protection of Human Rights and Fundamental Freedoms* (‘European Charter of Human Rights’).¹⁴⁰ It is interesting to note that there is no consideration of the obligations under the *Refugee Convention*.

---


¹³⁷ Ibid [2.1].


¹³⁹ *Thangarasa and Yogathas* [2002] UKHL 36, [34].

3 Detained Fast Track Process

An asylum decision is expected to take 10-14 days for DNSA cases and less than 14 days under the DFT.\textsuperscript{141} However there is an overriding principle of fairness that allows for flexibility or removal from the DFTP where fairness demands it.\textsuperscript{142} The Detained Fast Track Processes Timetable Flexibility (‘Flexibility Guidelines’) provides that time frames can be extended (for instance due to illness, interpretation problems or lack of legal representation) and that an asylum seeker can be removed from the DFTP in the appropriate circumstance.\textsuperscript{143}

The Detained Fast Track Suitability Exclusion Criteria (‘DFT Exclusion Criteria’)\textsuperscript{144} provides that the following groups are unlikely to be suitable for entry to the DFTP: women who are 24 or more weeks pregnant, family cases, children, people with a disability, physical or mental medical condition, potential victim of trafficking or torture or a lack of mental capacity to understand the asylum process.

4 Court Challenges

The expedited processing of asylum seekers was first considered in the case of \textit{R v Secretary of State for the Home Department, Ex Parte Saadi and Others (‘Saadi’)};\textsuperscript{145} the applicant claimed asylum upon entry to the United Kingdom but was not detained in the detention facility at Oakington Reception centre until three days later. The applicant and three other Iraqi detainees applied for judicial review, claiming that their detention had been unlawful under domestic law and did not uphold their right

\begin{flushleft}
\textsuperscript{141} Home Office UK Border Agency, \textit{DFTP Policy}, above n 133, [2.2].
\textsuperscript{142} Ibid [2.1].
\textsuperscript{144} Home Office UK Border Agency, \textit{DFTP Policy}, above n 133, [2.3]
\textsuperscript{145} [2001] EWHC Admin 670.
\end{flushleft}
to liberty under the *European Convention on Human Rights*.\(^{146}\) At first instance the court found that there was a breach of art 5 of the *European Convention on Human Rights*.\(^{147}\) However, on appeal both the Court of Appeal\(^{148}\) and the House of Lords\(^{149}\) held that the detention was lawful and was not a violation of the *European Convention on Human Rights*. The decision was upheld by the European Court of Human Rights by the Chamber of the Court’s Fourth Section and the Grand Chamber.\(^{150}\) The Grand Chamber found that detention was appropriate as it was a result of the fast track system.\(^{151}\) However, the Grand Chamber found that the UK did not provide adequate reasons for detention, violating art 5(2) of the *European Convention on Human Rights*.\(^{152}\) *Saadi* has upheld the UK practice with regard to accelerated procedures and administrative detention, showing that expedited procedures can meet obligations under international law.\(^{153}\) In a critique of the *Saadi* decision, Helen O’Nions stressed the importance of considering the effect of detention on applicants who may have suffered torture or trauma.\(^{154}\)

The DNSA process was specifically challenged in *ZL and VL v Secretary of State for the Home Department and Lord Chancellor’s Department* (‘*ZL and VL v SSHD*’)\(^{155}\) where the applicants complained that the procedures were unfair.\(^{156}\) The court noted that the process may be the applicant’s sole chance to establish a refugee claim,
without further opportunity to appeal before removal. Nevertheless it was held that the procedures in place provide a fair opportunity for applicants to demonstrate their case. Expedited processing may have received favourable comments at the judicial level but there have been problems with the DFTP in practice. I will consider these issues in conjunction with an examination of the system in the United States.

B United States of America

Unlike Australia and the UK, the US has only signed the Refugee Protocol, not the Refugee Convention. Under Article I(1) of the Protocol, signatories are bound by Articles 2-34 of the Refugee Convention. As Weis explains, the Protocol and the Refugee Convention are essentially ‘two treaties dealing with the same subject matter.’ In the US concern for border protection was heightened after the World Trade Centre was bombed in 1993. Expedited processing was introduced in the US as early as 1997 under the Illegal Immigration Reform and Immigrant Responsibility Act 1996; power was given to immigration inspectors at ports of entry to remove ‘aliens’ attempting to gain entry to the US through misrepresentation or with a lack of documentation or fraudulent documents. The legislation was intended to provide protection for those fleeing persecution whilst ensuring America’s borders were secure. Under the US system detention is mandatory for aliens subject to expedited removal, although aliens may be released from detention due to ‘urgent humanitarian reasons’ or ‘significant public benefit’ such as those with serious

---

157 Ibid [27]
158 Ibid [49], [52].
159 Refugee Protocol, accession by the US 01 November 1968.
161 Immigration and Nationality Act of 1952, Pub L No 82-313, 66 Stat 163 (1952) § 235(b)(1)(B) (‘INA’); In the US, people arriving without a valid visa are classed as aliens.
medical conditions, pregnant women and juveniles (‘parole criteria’). Effectively a person could be removed within 48 hours of arriving in the United States. Post 9/11 the US government has remained committed to detaining illegal aliens, afraid that terrorists would use asylum as a means to enter the US.

Upon arrival at a port of entry, aliens undergo an inspection where they are read instructions about the expedited removal process. If they express a fear of persecution, or an intention to claim asylum, the alien must be referred to a credible fear interview; they may not be removed prior to the interview. An asylum seeker is given 48 hours before the credible fear interview is conducted. A credible fear of persecution is found where ‘there is a significant possibility, taking into account…credibility of the statements… and such other facts known to the officer, that the alien could establish eligibility for asylum.’

If a credible fear is found, the alien will have an adversarial asylum hearing before an immigration judge to establish if the fear is ‘well-founded’ and satisfies one of the asylum grounds under the Refugee Convention. Where a credible fear is not found, aliens may seek review by an immigration judge who will assess the credible fear determination. Where a removal order is issued it must be reviewed and approved by a supervisor before removal is executed. A distinctive feature of the US system is

---

164 Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole, Parole of aliens into the United States 8 CFR § 212.5(b)(1)-(5) (2001).
166 Michael Welch and Liza Schuster, ‘Detention of asylum seekers in the UK and USA: Deciphering noisy and quiet constructions’ (2005) 7 Punishment and Society 397, 405; for one month, as part of Operation Liberty Shield in the US, asylum seekers were detained if they were from a country where al Qaida had been known to operate.
169 Procedures for Asylum and Withholding of Removal, Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act, 8 CFR § 208.31 (1999).
that once an alien has not made a successful asylum claim and therefore deported or
removed from the US, they are barred from returning to the US for five years.\footnote{INA, Pub L No 82-313, 66 Stat 163 (1952) § 212 (2006).}

1 Reports on Expedited Removal

There have been two federal reports into the expedited removal process; the first was
carried out by the General Accounting Office (‘GAO’) in 2000, the second by the US
Committee on International and Religious Freedoms (‘USCIRF’) in 2005.\footnote{US General Accounting Office, ‘Opportunities Exist to improve the Expedited Removal Process’ (Pub No GAO/GGC-00-176, 2000); USCIRF Report, above n 162.} The
\textit{GAO Report} considered 365 randomly selected files from 1999 and found that
generally the requirements of the expedited removal process were being complied
with.\footnote{GAO Report, above n 172, 9.} The \textit{USCIRF Report} was different as experts were appointed by the USCIRF
to observe proceedings at ports of entry, rather than reviewing case files.\footnote{USCIRF Report, above n 162, 14.} In
addition the Immigration and Naturalisation Service, responsible for expedited
\textit{USCIRF Report} also recommended that asylum officers should be permitted to grant
asylum claims during the credible fear interview\footnote{Ibid 66.} and called for a more consistent
application of the parole criteria to ensure asylum seekers are released from
detention.\footnote{Ibid 67.} Unfortunately none of the recommendations made required
congressional action.\footnote{See footnote 1 in USCIRF, ‘Assessing the US Government’s Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms’ (2013) (‘USCIRF Assessment’).} The Department of Justice and the Department Homeland
Security were directed to prepare and submit reports within 12 months.\footnote{USCIRF Report, above n 162, 76.} The
USCIRF has recently released a report assessing the implementation of
recommendations, specifically regarding detention, from the *USCIRF Report*. The *USCIRF Report* and subsequent *USCIRF Assessment* must be considered if Australia is to implement expedited procedures.

V EXPEDITED PROCESSING: COMPARATIVE ANALYSIS

The expedited processing of asylum seekers has been used as a balance between state sovereignty, allowing the state to have control of its borders, whilst also adhering to obligations under the *Refugee Convention*. From a human rights point of view, the biggest strength of expedited processing procedures is the potential reduction of time an asylum seeker spends in detention. The benefits of being determined as a refugee in a shorter period of time are threefold; an asylum seeker will avoid the negative effects of detention, there will be a reduced cost associated with keeping them in detention and most importantly, whether a decision is negative or positive, an asylum seeker can start the next chapter of their life. From the states point of view the benefits of an expedited procedure are the ability to further control the RSD process and the reduction in resources used when assessing an asylum application.

On both sides of the spectrum it is desirable to uncover asylum seekers that are not in fact refugees and to have them removed as soon as possible. However, these objectives can clash as legitimate asylum seekers may have their application rejected due to a number of factors which I will discuss below.

The major weakness of an expedited processing procedure is the danger of breaking the principle of *non-refoulement*. Where decisions are made within a short time frame it is more likely that mistakes will be made and asylum applications will be incorrectly rejected. As a result there may be more appeals which would not

---

180 *USCIRF Assessment*, above n 178.
181 I argue this from the point of view that the expedited processing procedures in the UK and the UK include the detention of asylum seekers.
182 *Global Consultation Note*, UN Doc EC/GC/01/12, [22].
reduce the amount of resources used or time taken to process an application. Some would argue that removing the right to appeal would ensure that the time taken and resources used to process an application would remain minimal. However the right to review or an appeal is a key safeguard against refoulement. The principle of non-refoulement should never be discarded in favour of expeditious procedures for asylum applications.\(^\text{183}\)

The principle of non-refoulement must underlie all asylum procedures. In the next section I will consider whether the expedited procedures in the UK and the US meet the Refugee Convention obligations under Article 33, the principle of non-refoulement, together with Article 16, Article 31, and the procedural safeguards noted above. The Refugee Convention as a whole aims to provide protection for people who have lost the protection of their state.\(^\text{184}\) Procedural safeguards are necessary to ensure that expedited procedures adhere to obligations under the Refugee Convention. Firstly I considered whether expedited procedures did process an application quicker and whether the time an asylum seeker spent in detention was reduced. In addition I considered whether the procedures made it possible for an applicant to be removed from the expedited process into standard RSD procedures where the expedited process was no longer suitable. Secondly I considered whether the expedited procedures had been effectively implemented and highlighted the importance of training. Finally I considered whether the expedited procedures provided assistance to asylum seekers including access to the courts, legal assistance and the provision of information.

---


\(^{184}\) Refugee Convention Preamble.
A Speed and Detention

The main objective of expedited processing procedures is for an asylum application to be considered more quickly than a standard RSD procedure. The UNHCR Ex Com noted that where a positive decision is expected, an expedited process costs less, detention of asylum seekers is reduced and resources can be focused on more complex cases.\(^{185}\) However, the UK government implemented expedited processing to deal with unprecedented numbers of asylum seekers. As expressed by the Oakington Detention Centre Project Manager Ian Martin in the case of *Saadi*, ‘it is in the interests of speedily and effectively dealing with asylum claims to facilitate the entry into the UK of those who were entitled to do so and the removal of those who are not.’\(^{186}\) The UK sought to process an asylum application more quickly by implementing expedited procedures and detaining asylum seekers.

Under Article 31 of the *Refugee Convention* an asylum seeker should not be penalised on account of their illegal entry. As noted earlier in Conclusion No. 44, the detention of asylum seekers is appropriate in certain circumstances but it should normally be avoided due to the hardship it involves.\(^{187}\) The UNHCR *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* provide procedural safeguards that should be in place if asylum seekers are to be detained. These include providing reasons for the decision to detain, the right to legal counsel, right to review by an independent body and for the asylum seeker to have access to non-government organisations or UNHCR.\(^{188}\)

---

\(^{185}\) *Global Consultation Note*, UN Doc EC/GC/01/12, [33].

\(^{186}\) *Saadi* [2002] UKHL 4 (31 October 2002) [18].

\(^{187}\) Conclusion No. 44 [b].

1 Procedures in the United Kingdom and the United States of America

In the UK the DFTP aims to determine an asylum seeker’s application within 7-14 days for a positive decision or within 21 days where a negative decision has been made to allow for appeal rights to be exercised. Asylum seekers are detained for the length of their assessment. There is a presumption that most asylum applications can be dealt with quickly. This assumption appears to have a fair basis if the underlying assumption is that the majority of asylum seekers are in fact refugees or have manifestly well-founded cases. However, the focus of the UK’s expedited procedures seems to be on those with manifestly unfounded or abusive cases. I will discuss the allocation of asylum seekers to the DFTP in detail below.

In the US all asylum seekers arriving at places of entry are detained and subject to expedited procedures. This does not meet the UNHCR Ex Com view that there should be a presumption against detention. The UNHCR Ex Com does permit detention for a short period of time in order to determine identity, where there has been the destruction of travel documents or use of fraudulent documents but they do not advocate for routine or extended detention. An alien is given 48 hours before taking part in the credible fear screening and if they are found to have a credible fear they are referred to an immigration judge for an adversarial asylum hearing. If they are determined not to have a credible fear an alien may have their determination reviewed no later than 7 days after the determination. The US system could be viewed as a fairer system as expedited procedures apply to all asylum arrivals; the

189 Home Office UK Border Agency, DFTP Policy, above n 133, [2.2].
191 Home Office UK Border Agency, DFTP Policy, above n 133, [2.2].
192 Conclusion No. 44 [b].
193 Ibid.
UN does promote a single asylum procedure. However, an expedited procedure would not be preferred over a full determination procedure. In theory it appears that expedited procedures in the UK and US will process asylum applications quickly but this objective is not always reached in practice.

2 In Reality

The UNHCR has repeatedly expressed concern with arbitrary and unjustified detention but asylum seekers are still being needlessly detained. The UNHCR does not consider that the DFTP has adequate safeguards against arbitrariness. A report from 2011 by the Detention Action organisation looked into the Detained Fast Track System at Harmondsworth Immigration Removal Centre (‘Detention Action Report’) and found that asylum seekers were detained for excessive amounts of time, considering that the intent of the fast track system was to minimise unnecessary detention. This was confirmed in another report carried out by the Independent Chief Inspector of the UK Border Agency in the same year that found asylum seekers in the study group were detained unnecessarily; 30% of the group were removed from the fast track system due to health issues or due to an incorrect referral to the fast track process as they met the exclusion criteria. However, this was not identified at the referral point perhaps due to a lack of specific questioning or failure

195 Global Consultation Note, UN Doc EC/GC/01/12, [48].
to disclose information. The *UK Independent Report* recommended that asylum seekers should be encouraged to disclose personal information in screening interviews to ensure their suitability for the DFTP could be properly assessed.²⁰⁰

In the US the average length of detention for aliens found to have met the credible fear screening standard was 89 days in 2009 and 66 days in 2010; 72% who were released had 90 days or fewer in detention in 2009, 87% in 2010.²⁰¹ Asylum seekers in the US and the UK have been detained for a prolonged period of time, much longer than specified by procedures.

3 *Removal from Expedited Processing: Flexibility and Recognition of Vulnerable Groups*

Tight time frames also impact upon an asylum seeker’s application and ability to convey information crucial to their case. In expedited processing, procedures must incorporate safeguards to allow flexibility where circumstances may have changed (‘UNHCR flexibility requirement’).²⁰² This is especially important where a case is *prima facie* considered to be manifestly unfounded or clearly abusive, but later evidence suggests this categorisation was wrong. Cases involving complex issues should not be included in accelerated procedures. Where an applicant no longer satisfies the criteria for an expedited procedure, flexibility allows for cases to be removed to standard RSD procedures. It is also important to ensure recognition of vulnerable groups who require special protection.²⁰³

²⁰⁰ Ibid [5.38].
²⁰² *Global Consultation Note*, UN Doc EC/GC/01/12, [50(d)].
²⁰³ *Global Consultation Note*, UN Doc EC/GC/01/12, [44].
In the US all asylum seekers arriving at ports of entry are detained; all asylum seekers arriving at ports of entry are processed under the expedited system.\textsuperscript{204} Asylum seekers may only be removed from detention if they meet the parole criteria as discussed above such as those with medical conditions, pregnant women and juveniles.\textsuperscript{205} There is little opportunity for asylum seekers to be removed from the expedited process in the US and there is minimal recognition of vulnerable groups which should not be placed in an expedited procedure.

In the UK the DFTP are a lot more flexible and recognise the needs of vulnerable groups. The Flexibility Guidelines recognise that every case is not the same and individual cases may encounter difficulties that require extra time or resources, incorporating the UNHCR flexibility requirement. However, the UNHCR found that flexibility was not being applied where it was appropriate and necessary.\textsuperscript{206} Where a request for flexibility was refused, there was often little justification provided.\textsuperscript{207} In an expedited process where applications are already considered under accelerated procedures, flexibility is vital to ensure an applicant is treated fairly. If flexibility is not practiced, a claim for protection will not be properly assessed.

The DFT Exclusion Criteria ensures that vulnerable groups are not subject to detention such as those subject to torture or trafficking. In addition, due to the way screening is practiced in the UK, there was concern that vulnerable asylum seekers could be incorrectly allocated to the DFTP.\textsuperscript{208} Encouraging applicants to disclose personal information at screening interviews is important to ensure this does not

\textsuperscript{204} The UK only detains asylum seekers for the DFT process or the DNSA process.
\textsuperscript{205} \textit{Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole}, Parole of aliens into the United States 8 CFR § 212.5(b)(1)-(5) (2001).
\textsuperscript{207} UNHCR, \textit{Quality Integration Project: Key Observations and Recommendations}, above n 206, 5.
\textsuperscript{208} Vine, \textit{UK Independent Report}, above n 199, [5.38].
occur. The UK’s policy is more comprehensive than the US and certainly satisfies the procedural safeguards suggested by the UNHCR.

4 Removal After a Negative Decision

If an asylum seeker’s application is rejected it is important that their removal is effected almost immediately to prevent unnecessary detention; however removal must be after they have exhausted their right to lodge an appeal. The UK Independent Report found that ‘…there were too many people remaining too long in detention before being removed.’ 209 There can often be issues with an asylum seeker’s habitual country not accepting involuntary returns of asylum seekers. In *R (on the application of Rostami) v Secretary of State for the Home Department*, 210 the claimant was refused his claim for asylum and exhausted all appeal rights in the UK in 2005. After travelling to Ireland to claim asylum he was returned to the UK in 2006 and repeated his claim for asylum which was denied. He was detained for nearly 34 months because he failed to cooperate in arrangements for his return to Iran; Iran required travel documentation proving his nationality and a declaration indicating that he was returning voluntarily before they would accept his return. 211 The court approved the claimant’s release from detention. 212 In their submission to the UKs Universal Periodic Review the UNHCR recommended that statelessness should weigh against detention where there is no reasonable prospect of removal. 213 If a person is recognised as being ‘stateless,’ that is not recognised as a citizen of any country, they should be removed from detention. Resettlement options must be considered as quickly as possible.

209 Ibid [6.34].
211 (2009) EWHC 2094 (QB), [46].
212 (2009) EWHC 2094 (QB), [73]-[78].
5 Reduced Costs

An associated benefit of processing asylum applications more quickly is the reduction of detention and processing costs. One of the reasons restrictive asylum procedures has been introduced is ‘due to the cost of the asylum process and the increasing burden on the welfare state.’\(^\text{214}\) Under expedited procedures asylum seekers are kept in detention for a shorter amount of time, therefore less resources should be used. This allows for resources to be directed towards more complex cases, which has also been noted by the UN.\(^\text{215}\) However if detention is still a necessary feature of asylum determination procedures it is inevitable that costs will still remain high. As noted above asylum seekers are consistently held in detention for prolonged periods of time.

Detention should not constitute an obstacle for asylum seekers to pursue their application.\(^\text{216}\) In fact, if detention is preferred, it should assist in the application process. Legal assistance and information regarding an asylum application could be readily provided on location at the detention centre and an asylum applicant would be readily available for interviews or further clarification of their claim. However expedited procedures can make it difficult for effective legal assistance to be provided due to time constraints. Alternatively, if the time spent in detention cannot be reduced, it would be less of a burden on the state and an asylum seeker if an applicant could be granted temporary entry into the community.

\(^{214}\) O’Nions, above n 154, 34.
\(^{215}\) Global Consultation Note, UN Doc EC/GC/01/12, [33].
The implementation of expedited procedures is crucial to their effectiveness. The UNHCR has noted the value and importance of training border and immigration officers. Training can be divided into two areas: procedural training including interviewing techniques and refugee protection principles and cultural and vulnerability training. It is essential that officials are provided special needs training about vulnerable asylum applicants such as women, children and victims of torture or trafficking, as well as an understanding of cultural differences. As many asylum seekers have had a negative experience with authority, often the source of their claim for refugee status, awareness and sensitivity are required. In addition the UNHCR noted that it is important to provide the asylum seeker with information regarding their rights, responsibilities and consequences of not cooperating with authorities. Training is an important procedural safeguard against refoulement as it ensures correct decisions are made and asylum seekers with legitimate claims are not being returned to persecution. In addition, sufficient training instils confidence in officers assessing asylum applications.

1 Procedural Training

Throughout my research there were a number of examples where it was evident that immigration officials lacked training and/or understanding of asylum principles and expedited procedures. In the US, Department of Homeland Security regulations state that a withdrawal of an asylum application must be strictly voluntary.

---

217 Global Consultation Note, UN Doc EC/GC/01/12, [23].
218 Global Consultation Note, UN Doc EC/GC/01/12, [23] Global Consultation Note, UN Doc EC/GC/01/12, [27].
219 Global Consultation Note, UN Doc EC/GC/01/12, [27].
221 Inspections of Persons Applying for Admission, Withdrawal of application for admission, 8 CFR § 235.4 (1997).
found that one port improperly encouraged aliens to withdraw their application.\textsuperscript{222} Another regulation states that an asylum seeker must be referred to a credible fear determination if they express ‘a fear of torture or fear of returning …’\textsuperscript{223} It was found that over half of the inspectors did not follow the script and that 15\% of the asylum seekers which did indicate that they had a fear of persecution were not referred to a credible fear interview.\textsuperscript{224} Pistone and Hoeffner suggest that asylum officers ‘should be required to confirm in writing …’ that they did in fact read out the instructions to the applicant to increase compliance.\textsuperscript{225} In the UK Amnesty International investigated why so many initial asylum decisions were being overturned on appeal and found that in 42 out of 50 cases analysed, the case owner had not followed the UKBA’s credibility assessment policies.\textsuperscript{226} Case owners are responsible for an asylum application from start to finish including interviews and making the final decision. In order to remedy this it was suggested that joint training programmes should be implemented including interviewing techniques, understanding cultural and personal issues and the effect trauma may have on an asylum applicant.\textsuperscript{227}

In an earlier report the Independent Chief Inspector of the UK Border Agency inspected the handling of asylum applications within NAM.\textsuperscript{228} The report considered the whole process, not specifically the DFTP,\textsuperscript{229} but it is still useful to consider its findings related to training. Since the introduction of NAM the training module for case owners had been shortened from 55 to 25 days and managers and senior caseworkers were concerned that case owners may not be adequately prepared.\textsuperscript{230}

\textsuperscript{222} USCIRF Report, above n 162, 6.
\textsuperscript{223} INA, Pub L No 82-313, 66 Stat 163 (1952) s 235(b)(1)(A) (2010).
\textsuperscript{224} USCIRF Report, above n 162, 6.
\textsuperscript{225} Pistone and Hoeffner, above n 100, 206.
\textsuperscript{226} Amnesty International, ‘A Question of Credibility? Why so many initial asylum decisions are overturned on appeal in the UK’, above n 220, 4.
\textsuperscript{227} Ibid 7.
\textsuperscript{228} Vine, ‘Asylum: Getting the Balance Right?’ above n 130.
\textsuperscript{229} Ibid [13].
\textsuperscript{230} Ibid [2.33].
Reassuringly the report found that officials did understand the impact of their decision.\textsuperscript{231} The Quality Initiative Project undertaken by the UNHCR in the UK found that decisions within the DFTP often incorrectly apply refugee law concepts; case owners are compromised due to the speed in which they must make a decision.\textsuperscript{232}

Procedures may be in place but adequate training and accountability are necessary to ensure that officers understand the implications of procedures and importance of following them. Alternatively where training is not provided across the board, it was recommended in the US that immigration officials not trained in asylum law should direct an asylum seeker to an asylum officer if they express a credible fear.\textsuperscript{233}

\textbf{2 Cultural and Vulnerability Training}

The \textit{USCIRF Report} noted the lack of specific training provided to staff in detention facilities regarding the special needs of asylum seekers, especially victims or torture or other trauma.\textsuperscript{234} It was recommended that training must be provided in order for case workers to better understand asylum seekers, many of whom are psychologically vulnerable.\textsuperscript{235} While the Immigration and Customs Enforcement Agency introduced a training module for detention officials on cultural awareness and asylum issues in 2007, the USCIRF Assessment recommended for the training to be expanded for all personnel who interact with detainees.\textsuperscript{236}

The UK’s procedures do encourage recognition of vulnerable groups as contained in the DFT Exclusion Criteria. However, insufficient screening interviews as discussed above may not protect vulnerable groups from being allocated to the DFTP. Unless

\begin{footnotes}
\item[231] Ibid [3.37].
\item[232] UNHCR, \textit{Quality Initiative Project: Fifth Report to the Minister}, above n 206, [2.3.7], [2.3.11].
\item[233] See Recommendation 5.2 in \textit{USCIRF Report}, above n 162, 73-74.
\item[234] Ibid [3.4].
\item[235] Ibid.
\item[236] \textit{USCIRF Assessment}, above n 178, 7-8
\end{footnotes}
further safeguards are introduced it may be useful to increase special needs training to ensure decision makers have a superior understanding.

C Legal Assistance, Appeals and Provision of Information

Article 16(1) and Article 16(2) of the Refugee Convention specifically provide refugees a right to access the courts and legal assistance. The United Nations has been consistent in affirming that asylum seekers should be well-informed throughout the asylum application process; they should be provided with reasons for decisions made at any stage of the asylum process including why they have been detained, why there may be delays and why their application was rejected.237

1 Legal Aid and Assistance

The UNHCR has directed that an asylum seeker should have access to legal counsel at all stages of a determination procedure but need only receive legal aid where it is available and a necessity.238 The US system allows for asylum seekers to seek legal advice or representation but not at an expense to the government.239 Similarly in the UK, information about legal assistance must be provided to asylum applicants.240 A legal representative is allocated to an asylum seeker from a selection of solicitors specifically contracted for the DFTP.241 On appeal however there must be at least a 50% likelihood of success for a legal aid lawyer to continue to represent an asylum

238 Global Consultation Note, UN Doc EC/GC/01/12, [50(g)].
239 See INA, Pub L No 82-313, 66 Stat 163 (1952) § 240(b)(4)(A) (2010) an alien may be represented by counsel before an immigration judge at no expense to government. Also see INA § 235(b)(1)(B)(iv) (2010) an alien may seek legal advice prior to their credible fear interview.
241 Ibid [333B]; Alger and Phelps, above n 198, 12.
The UK and US processes both meet the fair and efficient standards suggested by the UNHCR for legal aid and assistance.243

There is conclusive evidence that the provision of legal aid, even a small amount of assistance, assists an asylum seeker in their application. The USCIRF Report found that legal assistance was required as only 2% of cases where the applicant was unrepresented were granted relief when reviewed by an immigration judge, compared to 25% of cases where an asylum seeker was represented by legal counsel in 2002-2003.244 An asylum applicant benefits from legal assistance when preparing an appeal as well as the court; a well-prepared appeal lodgement would ensure a clear and speedy decision. This was echoed in the UK by the Detention Action Report which made it clear that legal aid must be provided to asylum seekers in a fast track process in order to enable the asylum seeker to understand the process and have a fair chance in presenting their case.245

In the UK the Early Legal Advice Project (‘ELAP’) was carried out between November 2010 and December 2012 to determine whether the provision of legal advice to asylum seekers increased the quality and efficiency of decisions and reduced the number of appeals.246 The pilot project in 2007/2008 showed significant evidence of improved decision making.247 While the ELAP did reduce the amount of appeals it did not impact on the appeal rate against refusals.248 All parties agreed that the process ensured decision making of a higher quality, thereby instilling confidence

242 New provisions were introduced this year under The Civil Legal Aid (Merits Criteria) Regulations 2013 (UK) SI 2014/104.
243 Global Consultation Note, UN Doc EC/GC/01/12, [50(g)]
245 Alger and Phelps, above n 198, 20.
247 Alger and Phelps, above n 198, 34.
248 Lane, above n 246, 5.
in the decision makers and the overall RSD process.\textsuperscript{249} Although providing assistance to the determination process, legal advice also led to a decision taking longer to be made therefore increasing the time an applicant spent in detention.\textsuperscript{250} If a choice must be made between a slightly longer time spent in detention and a more accurate decision, I believe the latter should be favoured. If the alternative is an incorrect decision and a breach of the duty of non-refoulement, extra time in detention would be a necessary evil.

The Immigration Law Practitioners’ Association Guide in the UK provides important guidance to legal practitioners assisting asylum seekers in the fast track process and aims to ensure that ‘…particularly vulnerable people can exercise their rights.’\textsuperscript{251} The guide was favourable to the rights of asylum seekers as the writer expressed discontent with detention procedures and \textit{Saadi}.\textsuperscript{252} Guidance such as this is necessary to ensure that people involved in an expedited process are well-informed and able to undertake the task at hand.

\textbf{(a) Interpreters}

Interpreters are another form of assistance that should be provided to asylum seekers, especially where asylum procedures are expedited.\textsuperscript{253} The DFTP ensures an interpreter is used in an asylum interview by asking asylum applicants their preferred language and delaying an interview where an interpreter is not available.\textsuperscript{254} US regulations also require interpreters to be provided.\textsuperscript{255} The \textit{USCIRF Report} found

\begin{itemize}
\item \textsuperscript{249} Ibid 6.
\item \textsuperscript{250} Ibid.
\item \textsuperscript{251} Immigration Law Practitioners’ Association, above n 190.
\item \textsuperscript{252} Ibid x, 3-4; \textit{Saadi v UK} (2008) 47 EHRR 17
\item \textsuperscript{253} \textit{Global Consultation Note}, UN Doc EC/GC/01/12, [43]
\item \textsuperscript{254} Flexibility Guidelines, above n 143, [4].
\item \textsuperscript{255} \textit{Inspection of Persons Applying for Admission}, Inadmissible aliens and expedited removal 8 CFR § 235.3(b)(2)(i) (2005).
\end{itemize}
that on more than one occasion an interpreter was not provided.\textsuperscript{256} There was little reference to interpreters in the UK reports I had assessed which may suggest that there are no issues in this regard. Recently there have been issues with interpreters not speaking an applicant’s regional dialect.\textsuperscript{257} While this complaint was not specifically about the DFTP it is an issue to consider when providing an interpreter.

\textit{2 Right to Appeal}

Under expedited processing it has been recognised that applicants should have a right to appeal or review, although the UNHCR Ex Com notes that the process may be simplified.\textsuperscript{258} Karen Musalo argues that it is especially important that expedited procedures must be subject to review to ensure that the civil and human rights of the asylum seekers are not prejudiced.\textsuperscript{259} In a democratic society we rely on transparency, checks and balances to ensure that procedures are carried out as intended. Phil Glendenning, head of the Refugee Council of Australia, recently said that, ‘Legal avenues for appeal and judicial review exist because mistakes are made and have been made.’\textsuperscript{260} A review or appeals process does prolong the refugee determination process but mistakes will inevitably be made; no system is perfect so there must be some form of review to ensure that decision-makers are not left unaccountable.

Under the DFT there are only two days provided to lodge an appeal,\textsuperscript{261} with the majority of asylum seekers unrepresented after it is deemed by their appointed

\textsuperscript{257} Vine, ‘Asylum: Getting the Balance Right?’ above no 130, 25
\textsuperscript{258} \textit{Global Consultation Note}, UN Doc EC/GC/01/12, [50(p)]
\textsuperscript{261} \textit{Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005} (UK) SI 2005/560 r 8(1); NIA (UK), c 41, s 83A.
solicitor that their case does not have a good chance of success.262 A concerning aspect of the DNSA process is the removal of a right to an in-country appeal.263 This poses the obvious risk of *refoulement* as asylum seekers can only appeal once they have been removed from the UK. There is a provision for a ‘second pair of eyes’ to review the certification that an asylum seeker’s application is in fact clearly unfounded.264 While not a specific right to appeal, at least the decision must be reviewed by a second person. Overall the DFTP does provide an avenue for appeal which meets procedural safeguards. In practice 93% of DFT decisions have been upheld on appeal, indicating that the initial decision maker in fact made a correct decision.265 In this context it could be argued that appeals seem unnecessary but the statistic helps to instil public confidence in the system.

In the US an alien may request a review of a negative credible fear determination by an immigration judge.266 If the immigration judge agrees with the initial decision maker there is no further right to appeal but alternatively if the immigration judge disagrees the alien may request relief from removal and apply for asylum during removal proceedings.267 This appeal right is very important given that 15% of observed cases by the *USCIRF Report* were not referred to a credible fear interview when the alien expressed a fear of return.268 Aliens also have a right to appeal immigration judges’ decisions in removal cases to the Board of Immigration Appeals. However the *USCIRF Report* found that the Board of Immigration Appeals

263 NIA (UK), c 41, s 94.
267 *INA*, Pub L No 82-313, 66 Stat 163 (1952) § 240.
268 *USCIRF Report*, above n 162, 54.
may no longer provide protection from incorrect decisions as only 2 to 4% of decisions were overturned on appeal from 2002-2004, compared to 25% in 2001.269

Another aspect of the US system is that undocumented arrivals may be subject to immediate removal by border officials;270 there is no avenue to appeal. This obviously breaches Article 31 of the Refugee Convention which states that there must be no penalty on account of illegal entry. Again the risk of refoulement is exceedingly high as some asylum seekers with legitimate claims may be returned.271

Many asylum seekers do not realise that their arrival interview, or secondary interview, is their last chance to seek asylum.272 It has been stressed by the UNHCR that when receiving asylum seekers at the border, border officials must understand that undocumented asylum seekers should not be denied entry on that basis.273

Overall, the UK system has stronger procedural safeguards in place to ensure that its international protection obligations are adhered to.

3 Provision of Information

It is important to keep an asylum seeker informed at every stage of the application process. A written decision should be given to an applicant; in particular a letter conveying a negative decision must provide reasons.274 Letters of rejection must also provide information regarding a right to appeal and the relevant procedures to enable asylum seekers to have access to an effective remedy.275 In the UK policy guidance confirms that reasons for refusal must be provided when a claim for asylum is

272 Ibid 40.
273 Global Consultation Note, UN Doc EC/GC/01/12, [34]-[35].
274 Global Consultation Note, UN Doc EC/GC/01/12, [50(o)].
275 Global Consultation Note, UN Doc EC/GC/01/12, [50(p)].
refused under the DFT, although the refusal letter is not as comprehensive where the applicant is in the DNSA. A record of the determination must be made in the US including why a refusal has been made. Where an alien is permitted to a credible fear interview, information is provided in regards to what the process involves. Following a negative credible fear determination a written notice of decision must be provided including provisions for review.

VI PROCEDURAL SAFEGUARDS FOR EXPEDITED PROCEDURES

It is important to separately consider whether expedited procedures in the UK and the US contain the procedural safeguards specifically for expedited procedures as guided by the UNHCR. In Conclusion No. 30 the UNHCR Ex Com considered that expedited procedures should only be used for claims which are manifestly unfounded or clearly abusive. Three specific safeguards were recommended for expedited procedures, recognising that an incorrect decision could result in grave consequences. The specific safeguards are that an asylum applicant should be given an individual interview, their claim must be established as ‘manifestly unfounded’ or ‘clearly abusive’ by the appropriate authority and the applicant must have a right to review. It cannot be said that expedited procedures in the US or the UK fully comply with these recommendations, in particular the recommendation that

277 Ibid. Where the applicant is entitled to reside in a country list in s 94(4) of the Nationality, Immigration and Asylum Act 2002 (UK) the letter will rarely include credibility issues.
279 Procedures for Asylum and Withholding of Removal, Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act, 8 CFR § 208.30(d)(2) (2001) it must be confirmed by the interviewing officer that the alien has received Form M-444, ‘Information about Credible Fear Interview’
280 Procedures for Asylum and Withholding of Removal, Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act, 8 CFR § 208.30 (g) (2001) Form I-869 Record of Negative Credible Fear Finding and Request for Review by Immigration Judge
281 Conclusion No. 30 [e].
282 Ibid [e][i], [ii] and [iii] respectively.
a claim is deemed manifestly unfounded or clearly abusive as defined in Conclusion No. 30. Both countries do provide for an individual interview by the appropriate agency so I have not provided further discussion in this regard. It is apparent that the UK and US do provide a right to review above. Under the DFT in the UK there is a right to appeal but it must be exercised within 2 days.\textsuperscript{283} Claims under the DNSA are reviewed by a ‘second pair of eyes’\textsuperscript{284} but the right to appeal is not available until after an applicant has been removed from the UK.\textsuperscript{285} In the US a negative credible fear determination may be reviewed by an immigration judge.\textsuperscript{286}

In this section my main concern is whether claims are in fact deemed manifestly unfounded or abusive, and whether the use of manifestly unfounded or clearly abusive protects obligations under the \textit{Refugee Convention}.

\textbf{A Definition of Manifestly Unfounded or Abusive Asylum Claims}

The UNHCR Ex Com provided that cases which are ‘…so obviously without foundation…’ may be dealt with expeditiously.\textsuperscript{287} These cases are classified as manifestly unfounded or abusive asylum claims; defined as claims which are clearly fraudulent or not related to the criteria for the granting of refugee status.\textsuperscript{288} The intention of the UNHCR was to provide recommendations for dealing with applications ‘by persons who clearly have no valid claim …’ as these applications created a burden for states and were detrimental to legitimate refugees.\textsuperscript{289} Unfortunately, the application of expedited procedures by the UK and the US has not been in line with \textit{Conclusion No. 30}. It would be desirable to uncover abusive

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{283} Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (UK) SI 2005/560, r 8(1); \textit{NIA} (UK), c 41, s 83A.
\item \textsuperscript{284} Home Office UK Border Agency, DNSA Policy, above n 136, [2.3].
\item \textsuperscript{285} \textit{NIA} (UK), c 41, s 94.
\item \textsuperscript{286} Review of credible fear determination, 8 CFR § 1003.42(a) (1997).
\item \textsuperscript{287} \textit{Conclusion No. 30} [d].
\item \textsuperscript{288} Ibid.
\item \textsuperscript{289} Ibid [c].
\end{enumerate}
\end{footnotesize}
asylum claims but expedited procedures have been used by the UK and the US to process asylum applications quickly, creating a separate ‘class’ of applicants before they have an opportunity to have their asylum application fairly assessed.

In the UK asylum seekers are directed into the DFTP after an entry interview; immigration officials have the power to divert asylum seekers into the DFTP if the claim is one in which ‘a quick decision can be made …’ An asylum seeker will not be directed into the DFTP where it is reasonably foreseeable that further clarification, advice, translation or evidence will be necessary, ensuring that the decision would not be able to be concluded within the fast track timescale. These guidelines are not very thorough and therefore are open to individual interpretation. In addition, UK Border Agency guidelines contain a presumption that most asylum applications can be dealt with quickly. As observed by the England and Wales Law Society ‘as a matter of principle and logic it cannot be right that the majority of cases fall within an accelerated procedure.’ The UNHCR commented that there was a lack of guidance as to what cases could be decided ‘quickly’ and a lack of reasoning as to why a case had been so categorised.

The DFT is an expedited procedure but fails to make any reference to ‘manifestly unfounded’ or ‘clearly abusive’ claims. However, claims which appear to be ‘clearly unfounded’ are routed into the DNSA process. It would appear that there is a distinction between a claim that is ‘manifestly unfounded’ and ‘clearly unfounded.’ ‘Manifestly unfounded’ relates to a fraudulent claim or a claim falling short of the refugee criteria, while ‘clearly unfounded’ makes it easier for decision makers to

290 Home Office UK Border Agency, DFTP Policy, above n 133, [2.2].
291 Ibid.
293 UNHCR, Quality Initiative Project: Fifth Report to the Minister, above n 206, [2.3.82], [2.3.88].
direct an applicant into the DNSA process. The UKBA has directed that the term ‘clearly unfounded’ is to be applied equally with ‘manifestly unfounded.’ In *Thangarasa and Yogathas* the court defined ‘manifestly unfounded’ in line with the UNHCR Ex Com and determined that a case could be deemed ‘manifestly unfounded’ with or without more than a ‘cursory’ look at the evidence. *ZL and V v SSD* provided a process of reasoning that must be undertaken when determining a claim as clearly unfounded. A decision maker must consider the factual substance and detail of the claim, how it stands with the known background data, whether it is capable of belief in whole or in part and whether it comes within the *Refugee Convention*. The claim will be clearly unfounded if it ‘cannot on any legitimate view succeed …’ A separate class of asylum seekers is still created by directing an asylum seeker onto the DNSA on the pretext that their claim is clearly unfounded. The UNHCR disapproved of the eligibility process for the DFTP as the process is a guidance policy as opposed to law. Classifying a claim as manifestly unfounded or abusive prior to this determination creates an extra barrier which an asylum applicant must get through. In the UK, this classification leaves border officials with an unfettered discretion to decide whether an asylum seeker can access full RSD procedures.

In the US expedited procedures are used for all border arrivals. Therefore all claims are processed in the same way; there is not an extra hurdle for asylum seekers to jump over. However, the UNHCR Ex Com has provided that expedited procedures

---

295 [2002] UKHL 36, [72].
297 [2003] EWCA Civ 25, [57]-[58].
must only to be used for manifestly unfounded or abusive claims. While a ‘separate class’ of asylum seekers is not created, the US clearly does not meet the UNHCR Ex Com’s recommendation. Both the US and the UK have not used expedited procedures as intended by the UNHCR.

B The Problem with the Classification

After further consideration I am more concerned with the actual idea of a separate class of asylum seekers with ‘manifestly unfounded or abusive claims.’ The UNHCR noted that manifestly unfounded or abusive asylum claims involve those which ‘clearly do not need international protection, as well as claims involving deception or intent to mislead which generally denote bad faith …’ These claims ‘give rise to a presumption of unfoundedness and expedited procedures can be put in place to test that assumption…’ This presumption is justified for asylum seekers who are ultimately found not to have a valid claim. Expedited procedures enable resources to be directed at legitimate asylum seekers, instead of being ‘wasted’ on asylum seekers who may be abusing the process. However, the presumption is unfair for those in expedited procedures who are ultimately found to be a refugee. It is difficult to determine how you would know that an asylum claim was manifestly unfounded or abusive before a proper assessment of the claim is made. By diverting asylum seekers into an expedited procedure, the UK have created a separate class of asylum seekers who need to rebut this ‘presumption of unfoundedness,’ in addition to having to prove their claim for asylum.

Conclusion No. 30 provides minimum safeguards, not all of which have been applied by the UK and the US, which offer little assistance to refugees. Refugee claims involve extensive research. An applicant may appear to have a weak claim in their

300 Global Consultation Note, UN Doc EC/GC/01/12, [50][d]].
301 Global Consultation Note, UN Doc EC/GC/01/12, [30].
initial interview but as evidence is uncovered the claim may gain more credibility as the RSD process continues. In addition, the *UNHCR Handbook* recognises the difficulties of securing supportive evidence considering an applicant has fled persecution with the ‘barest necessities …’ A decision maker may need to use their own resources to produce necessary evidence on behalf of the asylum applicant.\footnote{UNHCR Handbook, [196]-[197].} In addition, survivors of torture or trauma may not provide accurate accounts of the persecution they have suffered.\footnote{Ibid 87.} In their first entry interview a victim of torture or trauma may appear to have no claim for asylum. This suggests that an asylum decision should never be made on ‘face value;’ the only way to determine if an asylum seeker has a legitimate claim is by properly considering their claim.

Interestingly the UNHCR does not consider that accelerated procedures should be used for manifestly unfounded claims within its own RSD procedures.\footnote{The UNHCR carries out its own RSD pursuant to UNHCRs mandate under the *Statute of the Office of the United Nations High Commissioner for Refugees*, UN Doc A/1775, above n 87.} In 2005 the UNHCR publicly released its internal manual, ‘Procedural Standards for Refugee Status Determination under UNHCR’s Mandate’ (‘UNHCR’s Internal Manual’), which stated that accelerated procedures should be ‘reserved for Applicants who have compelling protection needs.’\footnote{UNHCR, *Procedural Standards for Refugee Determination under the UNHCR’s Mandate*, (1 September 2005) [4.6.4] <http://www.unhcr.org/4317223c9.html>.} In contrast to the message in Conclusion No. 30, the UNHCR’s Internal Manual suggests that accelerated RSD procedures should be used to ensure that legitimate refugees are given earlier protection, rather than ensuring that asylum seekers with manifestly unfounded or abusive claims are subjected to earlier rejection.\footnote{RSD Watch, ‘When UNHCR demands more of itself: accelerated procedures,’ (31 May 2001) <http://rsdwatch.wordpress.com/2010/05/31/when-unhcr-demands-more-of-itself-accelerated-procedures/>.} An open letter from a number of NGOs noted that there were irregularities ‘between UNHCR advice to governments and UNHCR’s...
own practices. This discrepancy may be as a result of state participation in the development of UNHCR Ex Com Conclusions which are not free from politicisation. The UNHCR has imposed a higher standard on their internal RSD procedures, in comparison to RSD procedures at the domestic level. Conclusion No. 30 was developed with good intentions but it has been used by the UK and the US to process asylum applications more quickly. It is important for the UNHCR to remove this irregularity between Conclusion No. 30 and its internal RSD standards. Conclusion No. 30 has provided justification for states to use accelerated procedures, resulting in the degradation of procedural safeguards and increasing the risk of breaching protection obligations under the Refugee Convention.

C Manifestly Well-Founded Asylum Claims

In the Global Consultation Note released in 2001, the UNHCR advised that manifestly well-founded claims for refugee status may be considered under an expedited procedure. Neither the US nor the UK appears to have procedures related to manifestly well-founded applications. While the NAM in the UK was introduced to enable faster protection for those who needed it, subsequent practice suggests that more weight has been given to enabling faster decisions for those who do not have a valid asylum claim. In circumstances where large scale human rights violations have taken place, it may be useful to consider introducing temporary expedited procedures with an assumption that an asylum seeker from a country where that has occurred would in fact have a legitimate refugee claim. It would be more in line with our international obligations to develop a policy where cases that are ‘clearly provable’ are processed under an expedited system. This may be a

---

308 Global Consultation Note, UN Doc EC/GC/01/12, [50(d)].
309 See page XXX.
direction to take in order to counter expedited procedures being mainly used for manifestly unfounded or clearly abusive claims.

It could be equally argued that having a class of ‘manifestly well-founded’ asylum seekers would create the same problem discussed above; would it be fair to assume that asylum seekers from certain countries are more likely to be legitimate refugees? In this instance at least the presumption that a claim is well-founded imposes a lower standard that an asylum applicant must meet in order to prove their claim (rather than the extra barrier created by the presumption of unfoundedness), reflecting a country’s obligation against refoulement. Issues would still remain depending on the procedures for the right to review and appeal. However if an applicant was determined not to be a refugee, where initially there was a presumption that they were a refugee, there would only be the slightest risk of refoulement.

D Conclusion

UNHCR Ex Com Conclusions and the Global Consultation Note are important documents to consider as they have been developed by experts. However, when implemented by the state they are often misconstrued and used to further their own policies. Expedited procedures in the UK and the US do not meet the basic safeguards recommended in Conclusion No. 30 and do not provide adequate protection against non-refoulement.

VII RECOMMENDATIONS FOR AUSTRALIA

Given my analysis above, neither the US nor the UK have expedited procedures with fool-proof procedural safeguards. In practice, expedited processing has not enabled either country to adhere to the full extent of their international obligations under the Refugee Convention. The DFTP certainly contains more comprehensive safeguards that theoretically adhere to the UK’s international protection obligations but in
practice the procedures have led to prolonged detention and a potential breach of the duty of non-refoulement. Pistone and Schrag went so far as to say that the expedited removal system in the US is ‘...more prone to error than the less-than-perfect system that preceded it.’ Expedited processing does not necessarily provide the answer to the increasing number of asylum seeker arrivals, or to asylum seekers who arrive without the proper documentation. The UNHCR has suggested that expedited procedures may be introduced to deal with manifestly unfounded, abusive claims and possible manifestly well-founded claims but the basic procedural safeguards have not been implemented by the UK and the US, nor do the safeguards ensure that international protection obligations will be adhered to. My ultimate recommendation is for Australia not to implement expedited processing for manifestly unfounded or abusive claims as I do not believe there is enough evidence to suggest Australia would be able to adhere to its international protection obligations based on the procedures in the UK and the US.

However, in keeping with my proposal at the beginning, I wish to provide some key points that should be considered if expedited processing is introduced in Australia. The Liberal-National Coalition has proposed to introduce a fast track and removal process, modelled on the DFTP (‘the Coalition’s Proposal’).\(^{310}\) I have included reference to the Coalition’s Proposal throughout my recommendations. Expedited procedures may enable Australia to meet its international obligations under the Refugee Convention only if procedural safeguards are more comprehensive than those in the UK and US, and if serious consideration is given to the areas I have identified below. I believe the focus should be on using expedited procedure for manifestly well-founded cases but I have also provided recommendations if this process is used for manifestly unfounded claims.

---

\(^{310}\) Liberal-National Coalition, above n 4, 7.
A Allocation to an Expedited Procedure

1 A Sufficient Definition

The most important aspect of an expedited processing procedure is the definition of who will be subjected to expedited processing, followed by how that will be determined. Expedited removal in the US applies to all asylum seekers arriving at ports of entry while the UK has fairly broad criteria for entering the DFTP. If expedited processing is introduced in Australia it should complement our current RSD procedures rather than replace them. Considering that 93.4% of asylum seekers in Australia were ultimately found to be refugees311 (suggesting the majority of claims are not manifestly unfounded or abusive), asylum seekers subject to expedited procedures should be the exception and not the norm.

The Liberal-National Coalition has indicated that cases which ‘appear less likely to be successful in gaining refugee status and can be determined readily’ will be referred to an expedited procedure.312 This classification must be developed further given that the ordinary meaning of likely in Australia is ‘a substantial – a ‘real and not remote’ – chance’313 ‘Less likely’ is not a very definitive description. In its current form the Coalition’s Proposal would not sufficiently protect an asylum seeker against refoulement.

As I have discussed above, expedited procedures should be focused on cases which are ‘clearly provable,’ with regard to events in the applicant’s country, or ‘clearly not provable,’ similar to manifestly abusive or unfounded claims. Australia should use the UNHCRs definition as a starting point; expedited procedures should apply to

312 Liberal-National Coalition, above n 4, 7.
asylum seekers with manifestly unfounded, well-founded or abusive claims.\textsuperscript{314} The UNHCR uses the words ‘clearly’ and ‘obviously’ suggesting that it must be exceedingly apparent that a claim is manifestly unfounded, well-founded or abusive. It must be impressed upon decision makers that a lack of documents or the use of false documents does not automatically make a claim abusive; it must be considered in addition to a refusal to cooperate or provide information.\textsuperscript{315}

2 Screening Interview

A comprehensive definition or criteria is of equal importance to the screening interview to ensure that asylum seekers are correctly placed into expedited procedures. As mentioned earlier, border screening interviews are typical for all people arriving in Australia without a valid visa. In the UK the Fast Track Intake Unit commented that allocation to the DFTP was based on information gathered during the screening interview.\textsuperscript{316} If Australia is to follow the same process, sufficient information must be acquired during a screening interview that allows a decision maker to determine whether an asylum seeker should be placed into an expedited procedure. It would not be possible to consider whether an asylum seeker had a legitimate claim for asylum unless they were able to disclose personal information.\textsuperscript{317} The screening interview should include specific questions relating to vulnerability to ensure that victims of torture or trafficking were not allocated to an expedited procedure. Asylum seekers should also be fully informed about the process and the potential outcomes of the interview. The acquisition of sufficient information during a screening interview also relates to other recommendations such as the provision of legal assistance and adequate training as discussed below.

\textsuperscript{314} Conclusion No. 30 [d]; Global Consultation Note, UN Doc EC/GC/01/12, [50 d]).
\textsuperscript{315} Global Consultation Note, UN Doc EC/GC/01/12, [35].
\textsuperscript{316} Vine, UK Independent Report, above n 199, [5.15].
\textsuperscript{317} Ibid [5.38].
The Coalition’s Proposal initially provides for a ‘desktop review.’\textsuperscript{318} Decision makers must provide reasons as to why an asylum seeker was directed into an expedited procedure. If there is any doubt about directing an asylum seeker to expedited procedures they should be directed to a normal RSD procedure to ensure the duty of \textit{non-refoulement} is upheld. This should be reflected in guidelines similar to the DFT Exclusion Criteria. In addition, guidelines similar to the Flexibility Guidelines should be developed to enable removal of an asylum seeker from an expedited procedure if it eventuates that their claim is no longer capable of a quick assessment.

The screening interview must also contain other safeguards such as access to interpreters, specifically in the correct dialect, and recognition of cultural issues which may impede on an asylum seeker’s ability to convey their claim.

\begin{center} B \textit{Realistic Time Frames} \end{center}

In Australia the \textit{Migration Act 1958} (Cth) provides that an RSD claim is to be processed within 90 days.\textsuperscript{319} This is at odds with a recent publication by the Department which states the Department ‘strives to meet service standards and process applications within 52 weeks …’\textsuperscript{320} It took on average 32.6 weeks for a refugee application to be granted and 23.4 weeks for refusal in the 2012-2013 period.\textsuperscript{321} The Department does note that there may be delays due to differing country information, additional health or character checks and ‘other variables’\textsuperscript{322} This irregularity may be related to the estimated 30 000 asylum applications that

\textsuperscript{318} Liberal-National Coalition, above n 4, 7.
\textsuperscript{319} \textit{Migration Act 1958} (Cth) s 65(a).
\textsuperscript{321} Ibid 39.
\textsuperscript{322} Ibid 3.
have yet to be processed. The Coalition’s Proposal has an indicative timetable of 14 days for the initial interview and assessment, 14 days for review of a negative decision and 21 days for removal to be effected; the total process would be completed within three months (‘Indicative Timetable’). Considering a standard RSD assessment is meant to take 90 days (without review), it would be interesting to know how the Indicative Timetable was determined. The Indicative Timetable is longer than procedures in the UK and the US so the Coalition’s Proposal is a step in the right direction. Even if expedited procedures reduce the amount of time spent processing an asylum application, speedier processing should not be the paramount objective of asylum processing. As discussed above, there is little use in having a shorter time frame if accurate decisions cannot be made. Time frames for an expedited procedure in Australia should be realistic, ensuring that unnecessary pressure is not placed on decision makers.

Another point to consider is the amount of time ultimately taken to process an expedited application, in comparison with the normal RSD procedure. I have demonstrated that expedited asylum applications took longer to process in practice than proposed in procedures in the UK and the US. In the US the average length of detention for aliens found to have met the credible fear screening standard was 89 days in 2009 and 66 days in 2010. This is more in line with Australia’s aim of 90 days under s 65A of the Migration Act 1958 (Cth).

In addition it is important to consider that asylum seekers in expedited procedures have spent an excessive time in detention. The UNHCR’s view is that detention is justified only to determine a person’s identity and where they do not have the

323 Liberal National Coalition, above n 4.
324 Liberal-National Coalition. above n 4, 7-8.
325 Migration Act 1958 (Cth) s 65(a).
appropriate immigration papers.\textsuperscript{327} An asylum seeker may be detained under s 189 of the \textit{Migration Act 1958} (Cth). However, Australia has already been chastised for arbitrary and indefinite detention on a number of occasions.\textsuperscript{328} The UN Human Rights Committee has held that detention will be arbitrary if it exceeds a period beyond which a state can provide appropriate justification.\textsuperscript{329} Recently the UN Human Rights Committee condemned Australia for detaining 46 refugees for almost two and a half years; they could not be returned to their country as they were refugees, nor could they be released into the Australian community as they were assessed to be a security risk.\textsuperscript{330} If an asylum seeker is going to be detained for an extended period of time it would seem logical to simply process them under the regular RSD process, instead of expediting their application. Alternatively, if it is not possible to process an asylum claim within the shorter expedited time frame, or where other issues arise, alternative options to detention should be considered to prevent instances of unjustified detention.

\textbf{C Putting Procedures into Practice}

\textbf{1 Training}

I believe that more in-depth training of immigration officials and those involved in the asylum process would resolve issues that have been experienced in the US and

\textsuperscript{327} \textit{Conclusion No. 44 [b].}


\textsuperscript{329} Human Rights Committee, \textit{Views: Communication No 560 1993}, 59\textsuperscript{th} sess, UN Doc CCPR/C/59/D/560/1993 (30 April 1997) (\textquoteleft A v Australia\textquoteright), [9.4]; Human Rights Committee, \textit{Views: Communication No 1050/2002, 87\textsuperscript{th} sess}, UN Doc CCPR/C/87/D/1050/10-28 July 2006 (\textquoteleft D and E, and their two children v Australia\textquoteright), [7.2].


\textsuperscript{62}
the UK. If expedited procedures are to be introduced in Australia training of immigration officials is crucial to ensure that procedural safeguards are given full effect. Pistone and Hoeffner point out that carefully negotiated regulations, containing the appropriate safeguards, are almost obsolete where they have not been adequately or consistently applied in practice. Training would be a step towards ensuring that the correct decision is made in the first instance; the number of appeals, time spent in detention and the risk of refoulement would all be reduced. It must be stressed that procedures are there to be followed; they have been developed to ensure international protection obligations are adhered to and to ultimately prevent refoulement.

Officials responsible for determining whether an asylum seeker should be directed into expedited procedures and those responsible for determining asylum claims require extensive training in asylum principles. All officials including those at the border, detention centre workers and those who determine asylum claims require training in vulnerable groups and cultural issues. In training programs it may also be useful to seek the assistance of refugees who have had their asylum claim assessed in Australia to develop a real understanding of how the process affects asylum applicants.

While not directly related to training, the UNHCR also suggested that case owners in the DFTP should be rotated off decision-making duties to ensure they are exposed to the overall asylum process and do not become ‘case hardened.’

---

331 Pistone and Hoeffner, above n 100, 169.
332 Pistone and Hoeffner, above n 100, 190.
333 UNHCR, *Quality Initiative Project: Fifth Report to the Minister*, above n 206, [2.3.78].
334 *Global Consultation Note*, UN Doc EC/GC/01/12, [23].
335 Vine, ‘Asylum: Getting the Balance Right?’ above n 130, Summary of Recommendations [15].
would result in a well-rounded official and would be an important step in providing a fair expedited procedure.

2 Reforming the Border Security Culture and Changing Perceptions

Training must also be accompanied by a reformation of the wider border security culture. Michelle Pistone and John Hoeffner provided a great analysis of the expedited processing system in the US, recognising that expedited removal occurs in an ‘enforcement culture …’ with the focus on ‘restricting illegal immigration, as opposed to maximising legal immigration…’ Only recently the current Minister for Immigration and Border Protection Scott Morrison directed departmental and detention centre staff to refer to asylum seekers as ‘illegal arrivals’ and ‘detainees’ rather than clients. Morrison claims that the language is ‘politically correct’ as the term relates to people smuggling rather than asylum but arguably the term negatively influences the public view of asylum seekers. Certainly the attitude of the Australian government is to secure its borders, rather than give asylum seekers the benefit of the doubt. This attitude is similar to a utilitarian view that RSD procedures are morally right if they uncover the majority of legitimate asylum seekers at the expense of a few legitimate asylum seekers. However, failure to uncover a genuine asylum seeker would result in *refoulement*. While you cannot ensure that every genuine asylum seeker will be granted refugee status, it is important that procedures are developed to be as close to perfect as possible.

---

337 Pistone and Hoeffner, above n 100.
338 Ibid 197.
340 Lanai Scarr, above n 332.
In his submission to the Senate Joint Select Committee on Australia’s Immigration Detention Network, Graeme Swincer touched on this issue, ‘Asylum seekers and officials are often both prisoners of their own culturally determined way of perceiving and thinking.’ Underlying cultural differences impose heavy barriers which need to be broken down. This may be difficult in an expedited procedure where an applicant must present their claim in a short amount of time. As recognised by a Canadian review, unless attempts are made to address underlying issues, modifying procedures will prove worthless. Reforming the culture of border security enforcement agencies is important for the whole RSD process but it must be brought about slowly.

D Ensuring Accountability

1 The Right to Review or Appeal is Crucial

Australia should include a right to appeal in an expedited procedure. Rosemary Byrne, in a review of the Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, argues that minimising rights of appeal presupposes that first instance decision makers will apply the correct criteria and make a correct decision thereby eliminating the risk of refoulement if an asylum seeker is removed as soon as a negative decision is made. However, if a negative decision was made and it was incorrect, no right to appeal would breach the duty of non-refoulement. I have noted the issues with creating a separate class of asylum seekers, before their claims can be properly assessed.

341 Graeme Swincer, Submission No 46 to Senate Joint Select Committee on Australia’s Immigration Detention Network, Parliament of Australia, 12 August 2011.
343 Pistone and Hoefner, above n 100, 200.
345 Byrne, above n 299, 75.
Having a right to appeal or review is further supported by an analysis of the asylum adjudication system in the US which found an immense disparity in grant rates between decision makers in the immigration system. The chances of being granted asylum depended upon the quality of legal representation, the gender and work experience of the immigration judge. Asylum decisions are inherently subjective and procedures may not be uniformly applied. The only way to ensure protection against an incorrect decision is by having a right to appeal or implementing a review process within the procedures, similar to the UK’s ‘second pair of eyes,’ to ensure that refugee status should not be granted and that the application was manifestly unfounded or abusive. The Coalition’s Proposal includes a review of a negative decision by another case officer and allows the applicant to present their claim. Again this is a step in the right direction but I would also urge the addition of a right to appeal to an independent body as specified by the UNHCR.

Lastly I do not think Australia should follow the DNSA and deport an asylum seeker with a negative decision before they are able to exercise their right to appeal. Until a final decision has been made, a negative decision should have suspensive effect. In order to properly ensure that the duty of non-refoulement is adhered to, the right to appeal should be exercised before an asylum seeker is returned to their habitual country.

2 Legal Assistance

The benefits of legal assistance have been reiterated above. In Australia it has already been noted that asylum seekers with no knowledge of Australia’s legal

347 Liberal-National Coalition, above n 4, 8.
348 Global Consultation Note, UN Doc EC/GC/01/12, [43].
349 Global Consultation Note, UN Doc EC/GC/01/12, [43].
350 See C Legal Assistance, Appeals and Provision of Information 43-45 above.
system would have little chance of formulating a proper application without the assistance of independent legal advice.\textsuperscript{351} The UNCHR has identified that where an appeals process is expedited, it is particularly important that asylum seekers have prompt access to legal advice.\textsuperscript{352} I recognise that it may not be possible for legal assistance to be provided in an entry interview but, as suggested by Freedom from Torture and the Detention Action Network in the UK, perhaps asylum seekers should not be directed to an expedited procedure until they have had an opportunity to seek legal advice and know what is required from them.\textsuperscript{353} The Coalition’s Proposal does not make reference to legal assistance within an expedited process. While previous Shadow Minister for Immigration and Citizenship, Scott Morrison indicated prior to the federal election the Liberal-National Coalition indicated that they will remove ‘taxpayer funded advice under the Immigration Advice and Application Assistance Scheme [‘IAAAS’] for all those who have arrived illegally by boat.’\textsuperscript{354} The IAAAS provided legal assistance to asylum seekers who have their claims processed in detention.\textsuperscript{355} This suggests that legal assistance would not be provided within an expedited procedure.

Considering the results of my analysis I think it is essential that applicants should have access to legal assistance in an expedited procedure. Legal assistance has greatly assisted asylum seekers with the preparation of their claims and has also assisted decision makers who have to make decisions within short time frames.


\textsuperscript{352} Global Consultation Note, UN Doc EC/GC/01/12, [43].


3 Review of the Expedited Processing System

Throughout my thesis I have referred to reports undertaken in the US and the UK, as well as later assessments concerning the implementation of initial recommendations. These reports have been crucial to analysing whether expedited procedures work in practice and recognising their deficiencies. In Australia it would be important to schedule consistent reviews of the overall expedited removal process to moderate and improve the system.

On a more frequent basis, an internal review process should also be implemented for decision makers to ensure that decisions are consistent and of a high quality.356 Accountability is of the upmost importance considering an incorrect decision may return someone to harm, and even death. Decision makers must be required to provide reasons for their decisions.

E Application of Complementary Protection

If expedited processing is introduced in Australia, another issue to be considered is how complementary protection will be assessed within the Coalition’s Proposal. Complementary protection is currently assessed after it has been found that an applicant is not a refugee. The Coalition’s Proposal is meant to be directed at applicants who do not have legitimate claims for refugee status but what if they meet the criteria for complementary protection. It may not be possible to consider a claim for complementary protection within the Indicative Timetable, as well as a claim for asylum.

356 UNHCR, *Quality Initiative Project: Fifth Report to the Minister*, above n 206, [26].
VII CONCLUSION

The Australian government has become focused on asylum seekers who may be abusing the RSD system, instead of focusing on whether they are legitimate refugees.\textsuperscript{357} The expedited processing of asylum seekers is one alternative to standard RSD procedures. The UK, US and now Australia see expedited procedures as a solution to maintaining control of their borders, processing refugees and maintaining their international protection obligations, without providing access to standard RSD procedures. The Liberal-National Coalition claims that asylum seekers will no longer have to suffer ‘long periods of idleness and uncertainty …’\textsuperscript{358} with the introduction of the Coalition’s Proposal. However, considering the experience of the UK and the US, there is no guarantee that this will be the case. Expedited processing claims to be accessible, quick and cheap; like instant coffee it provides a temporary solution to that much-needed coffee fix. However, instant coffee lacks the full satisfaction of a properly made coffee. Expedited processing has exceeded time frames set by procedures and asylum seekers have still been subject to excessive detention. The Australian Human Rights Commission is concerned that the Coalition’s Proposal risks breaching Australia’s human rights obligations.\textsuperscript{359} The procedural safeguards provided by the UNHCR have not been implemented consistently by the US or the UK, nor have they sufficiently ensured that international protection obligations have been adhered to.

If expedited processing is to be implemented in Australia it should complement our current system, not replace it, and any proposal must contain comprehensive


\textsuperscript{358} Liberal-National Coalition, above n 4, 7.

\textsuperscript{359} AHRC, \textit{AHRC Snapshot Report}, above n 25, 18-19.
procedural safeguards. The focus of expedited procedures should first and foremost be on uncovering asylum seekers with clearly provable or manifestly well-founded cases. Preference should then be given to uncovering asylum seekers with manifestly unfounded or abusive claims as long as screening and routing procedures are thorough enough to ensure asylum seekers are correctly allocated to an expedited system.

It is important to consider that if Australia’s current standard RSD procedures cannot provide correct initial decision making, it would be even more difficult for expedited procedures to properly assess refugee applications. Discarding standard RSD procedures and replacing them with expedited procedures may not necessarily result in a comprehensive, fairer or more efficient system. Expedited processing will never completely satisfy international protection obligations as the risk of refoulement is too high. In signing the Refugee Convention Australia has committed itself to the protection of refugees. Australia’s RSD procedures should reflect this commitment and make it the priority, rather than something to be considered within the realm of border security.
A Articles/Books


Andrew, Edward, ‘Jean Bodin on Sovereignty’ (2011) 2(2) *The Journal for the Study of Knowledge, Politics and the Arts*  


Crock, Mary and Laurie Berg, *Immigration Refugees and Forced Migration: Law, Policy and Practice in Australia* (Federation Press, 2011)


Garner, Robert, Peter Ferdinand and Stephanie Lawson. *Introduction to Politics* (Oxford University Press, 2nd ed, 2012)


Stefanelli, Justine, ‘Whose Rule of Law? An analysis for the UKs decision not to opt-in to the EU asylum procedures and reception conditions Directions’ (2011) 60(4) *International and Comparative Law Quarterly* 1055


Welch, Michael and Liza Schuster, ‘Detention of asylum seekers in the UK and USA: Deciphering noisy and quiet constructions’ (2005) 7(4) *Punishment and Society* 397


Home Affairs Committee, House of Commons, United Kingdom, Seventh Report – Asylum – Volume 1, 8 October 2013 <http://www.publications.parliament.uk/pa/cm201314/cmhaff/71/7102.hfm>
<https://www.gov.uk/government/publications/immigration-statistics-january-to-
march-2013/immigration-statistics-january-to-march-2013>

<http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Commit-
tees/immigrationdetention/report/~media/wopapub/senate/committee/immigration_d-
etention_ctte/report/report_pdf.ashx>


Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Examination of Legislation in accordance with the Human Rights (Parliamentary Scrutiny Act) 2011* (19 June 2013)
Completed_inquiries/2013/92013/index>


C Cases

Arbitral Award of 31 July 1989 (Guinea Bissau v Senegal) [1991] ICJ Rep 53

Boughey v R (1986) 161 CLR 10


Minster for Immigration and Multicultural Affairs v Khawar [2002] HCA 14

QAAH of 2004 v Minister for Immigration and Multicultural and Indigenous Affairs[2005] FCAFC 136

R (on the application of Rostami) v Secretary of State for the Home Department [2009] EWHC 2094 (QB)

R (on the application of Saadi and Others) v Secretary of State for the Home Department [2001] EWHC Admin 670

R (on the application of Saadi and Others) v Secretary of State for the Home Department [2001] EWCA Civ 1512


R v Secretary of State for the Home Department, ex parte Thangarasa; R v Secretary of State for the Home Department, ex parte Yogathas [2002] UKHL 36

Rahman v Canada (Minister for Citizenship and Immigration) [2002] 3 FC 537
Saadi v UK (2008) 47 EHRR 17

ZL and VL v Secretary of State for the Home Department and Lord Chancellor’s Department [2003] EXCA Civ 25
D Legislation and Related Materials

Aliens and Nationality, 8 CFR (US)

Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (UK) SI 2005/560


Immigration and Nationality Act of 1952, Pub Law 82-313, 66 Stat 163 (1952)

Immigration Rules (HC 395) (UK)
<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

Migration Act 1958 (Cth)

Migration Regulations 1994 (Cth)

Nationality, Immigration and Asylum Act 2002 (UK), c 41

The Civil Legal Aid (Merits Criteria) Regulations 2013 (UK) SI 2013/104
**Treaties**

*Charter of the United Nations*


*Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954)


*Universal Declaration on Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948)


Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, ESC Res 672(XXV), 1019th plen mtg, UN Doc E/RES/672(XXV) (30 April 1958)

Executive Committee of the High Commissioner’s Programme, Conclusion No. 8 (XXVIII) – 1977 Determination of Refugee Status (12 October 1977)

Executive Committee of the High Commissioner’s Programme, Conclusion No. 30 (XXXIV) - 1983 The Problem of Manifestly Unfounded or Abusive Application for Refugee Status or Asylum (20 October 1983)

Executive Committee of the High Commissioner’s Programme, Conclusion No. 55 (XL) – 1989 General (13 October 1989)

Executive Committee of the High Commissioner’s Programme, Conclusion No. 71 (XLIV) – 1993 General (8 October 1993)

Executive Committee of the High Commissioner’s Programme, Conclusion No. 44 (XXXVII) - 1986 Detention of Refugees and Asylum-Seekers (13 October 1986)

International Assistance to Refugees within the Mandate of the United Nations High Commissioner for Refugees, GA Res 1166(XII), 12th sess, 723rd plen mtg, UN Doc GA/RES/1166(XII) (26 November 1957)

International Assistance to Refugees within the Mandate of the United Nations High Commissioner for Refugees, GA Res 1166(XII), 12th sess, 723rd plen mtg, UN Doc GA/RES/1166(XII) (26 November 1957)


UNHCR, Asylum Processes (Fair and Efficient Asylum Procedures), Global Consultations on International Protection, 2nd mtg, UN Doc EC/GC/01/12 (31 May 2001)


UNHCR, Quality Integration Project: Key Observations and Recommendations (August 2010) <http://www.unhcr.org/4e1578749.html>


UNHCR, UNHCR Statement on the right to an effective remedy in relation to accelerated asylum procedures (21 May 2010) <http://www.unhcr.org/4deccc639.html>


Minister for Immigration and Citizenship (Cth), ‘Responding to irregular maritime arrivals’ (Media Release, 14 May 2013)
Minister for Immigration, Multicultural Affairs and Citizenship (Cth), ‘New arrangement with Nauru Government’ (Media Release, 3 August 2013)


Department of Immigration and Border Protection, ‘Australia by boat? No Advantage,’ (November 2013)  

Detention Action UK, *Submission to the UN Special Rapporteur on Human rights of Migrants: Immigration Detention in the UK* (January 2012)  

Evidence to Legal and Constitutional Affairs Committee, Parliament of Australia, Canberra, 11 February 2013, 94, 154, (Martin Bowles)

Evidence to Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, Canberra, 27 May 2013, 33 and 47 (Martin Bowles), 107 (Alison Larkins) and 115 (Wendy Southern)

Graeme Swincer, Submission No 46 to Senate Joint Select Committee on Australia’s Immigration Detention Network, Parliament of Australia (12 August 2011).

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/enforcement/>


<http://www.ilpa.org.uk/data/resources/13264/ilpa_bpg_detained_fasttrack.pdf>

<http://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1365135867/Labor_National_Platform.pdf?1365135867>


<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71we-14.htm>