

SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF  
MIGRANTS

## **PUSHBACK PRACTICES AND THEIR IMPACT ON THE HUMAN RIGHTS OF MIGRANTS**

The Refugee Council of Australia (RCOA) is the national peak body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 200 organisations. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants.

This submission aims to provide the office of the Special Rapporteur with information and detailed examples of Australia's turnback policies. Since 2013, over 800 people seeking asylum on 38 vessels have been forcibly returned to their country of departure, either with a very rudimentary assessment process, or no refugee status assessment at all. Each of these returns are in clear violation of international law, yet remain a key policy of the Australian Government.

Due to limited space, we address questions 1, 2 and 3 of the Special Rapporteur's consultation paper. We are happy to provide the Special Rapporteur further information.

### **1 Australian law and policy on turn-backs**

Australia does not protect the right to seek asylum, in either legislation or policy. Section 197C of the *Migration Act 1958* provides that, in removing a person from Australia, "it is irrelevant whether Australia has non-refoulement obligations".

Likewise, in 2014, the Government legislated for new powers to detain people at sea (both within Australian waters and on the high seas) and to transfer them to any country or a vessel of another country – even if Australia does not have that country's consent to do so. These powers can be exercised without consideration of Australia's *non-refoulement* obligations, the law of the sea or any other international obligations.<sup>1</sup>

These powers allow the Minister for Home Affairs to hold asylum seekers in arbitrary, indefinite and potentially incommunicado detention at sea and forcibly transfer them to countries where they could face persecution and other forms of serious harm, without any scrutiny by the public, courts or Australian Parliament. They grant a level of authority to the Minister which is well in excess of what is considered permissible under international maritime and human rights treaties.

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<sup>1</sup> Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014.

## **2 Information on existing restrictions or limitations in law and in practice in relation to the right to claim and seek asylum at international borders in your country**

Since the first boat of asylum seekers landed in Darwin in 1976, almost 70,000 asylum seekers have travelled to Australia by boat.<sup>2</sup> However, between 2001 and 2016, approximately 1500 other asylum seekers have been prevented from arriving in Australia through a range of interdiction policies.<sup>3</sup>

Australia first introduced the policy of interdiction in 2001, following the Tampa incident. The Tampa incident sparked the introduction of Australia's interdiction program named 'Operation Relex', which lasted until early 2002.<sup>4</sup> During this period, 12 vessels were detected attempting to reach Australia. Of these, four were successfully intercepted and returned to Indonesia, three ultimately sank and the rest were intercepted and passengers were taken to Christmas Island or Nauru and Manus Island, Papua New Guinea (PNG). In 2006, a final boat was intercepted and returned to Indonesia under 'Operation Relex II'.<sup>5</sup>

Under Australia's Labor Government, from 2007 to 2013, no boats were turned back, despite discussions within the party on adopting the policy and the Navy and Customs officials attempting to persuade people to return to Indonesia.<sup>6</sup> On 18 September 2013, 11 days after the Liberal-National Coalition won back power in Australia's federal election, Prime Minister Tony Abbott implemented Operation Sovereign Borders, a "military-led response to combat people smuggling and to protect [Australia's] borders".<sup>7</sup> Operation Sovereign Borders involved a staunch commitment that all asylum seekers arriving by boat would be turned back to their country of departure. From September 2013 until January 2020, 38 boats, carrying at least 873 people, were intercepted and returned to their country of departure, including to Sri Lanka, Vietnam and Indonesia (see Appendix 1 below).

During Operation Sovereign Borders, interdictions and turn-backs occurred within Australian territorial waters, on the high seas, and also within the territorial seas of Indonesia, in breach of international law.<sup>8</sup> The Australian Government distinguishes between 'turnbacks' and 'take-backs'. The Australian Government defines 'turnbacks' as "the safe removal of vessels from Australian waters, with passengers and crew returned to their countries of departure" and 'take-backs' as a transfer (often at sea) of passengers from one sovereign authority to another "where Australia works with a country of departure in order to see the safe return of passengers and crew".<sup>9</sup>

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<sup>2</sup> Janet Phillips, 'Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics' Parliamentary Library, Parliament of Australia  
<[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1617/Quick\\_Guides/BoatTurnbacks](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/BoatTurnbacks)>.

<sup>3</sup> Joyce Chia, 'Statistics on boat arrivals and boat turnbacks' Refugee Council of Australia  
<<https://www.refugeecouncil.org.au/asylum-boats-statistics/2/>>.

<sup>4</sup> Andreas Schloenhardt and Colin Craig, "Turning Back the Boats": Australia's Interdiction of Irregular Migrants at Sea' (2015) 27 *International Journal of Refugee Law* 536, 538.

<sup>5</sup> Andreas Schloenhardt and Colin Craig, "Turning Back the Boats": Australia's Interdiction of Irregular Migrants at Sea' (2015) 27 *International Journal of Refugee Law* 536, 538.

<sup>6</sup> Andreas Schloenhardt and Colin Craig, "Turning Back the Boats": Australia's Interdiction of Irregular Migrants at Sea' (2015) 27 *International Journal of Refugee Law* 536.

<sup>7</sup> Andreas Schloenhardt and Colin Craig, "Turning Back the Boats": Australia's Interdiction of Irregular Migrants at Sea' (2015) 27 *International Journal of Refugee Law* 536, 548.

<sup>8</sup> The Australian Senate, Breaches of Indonesian Territorial Waters (2014).

<sup>9</sup> Janet Phillips, 'Boat 'turnbacks' in Australia: a quick guide to the statistics since 2001' Parliamentary Library, Parliament of Australia  
<[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1819/Quick\\_Guides/BoatTurnbacksSince2001](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/Quick_Guides/BoatTurnbacksSince2001)>.

Turnbacks have only been carried out with respect to boats departing from Indonesia.<sup>10</sup> According to Dastyari and Ghezelbash, “given the fact that Indonesia does not consent to the returns, migrants are returned to the edge of Indonesian waters and directed to make their own way back to land”.<sup>11</sup>

A number of these turn-backs involved ‘enhanced screening’ at sea. The policy of enhanced screening was first introduced in 2012 by the Labor Government to apply to Sri Lankan boat arrivals, and was mostly undertaken in Australian territory on Christmas Island.<sup>12</sup> As part of the Operation Sovereign Borders, the policy of enhanced screening was implemented while asylum seekers were detained on Navy and Custom vessels at sea. This policy involves “asking each of the asylum seekers a set of four questions and determining their refugee status on the basis of their answers to these questions (the asylum seeker’s name, country of origin, where they had come from, and why they had left) without a right to appeal a negative decision”.<sup>13</sup>

This policy of enhanced screening prevents asylum seekers from making a detailed refugee claim and denies them any procedural fairness.<sup>14</sup> However, more recent responses from the Department of Home Affairs to questions raised through the Australian Senate’s Estimates Committee process have also revealed that “The Department no longer conducts enhanced screening either at sea or on land.”<sup>15</sup> This presents further concerns that people seeking asylum are not even given a rudimentary assessment of their refugee claims, and are therefore returned without any assessment of their refugee status.

The Australian Government also conducts an entry-screening process for air arrivals at Australian airports. This practice assesses whether people arriving in Australia may wish to seek asylum, and either summarily returns them before they are able to submit an asylum application, or detains them indefinitely until they are assessed as refugees.<sup>16</sup> The Australian Government has admitted that it does not keep adequate records of the number of potential asylum seekers returned from Australian airports and, as a result, it is difficult to know exactly how many people have been returned to harm.

### **3 Please provide information on any concrete instances of pushbacks, including an analysis on the circumstances of the event.**

The Australian Government provides few details about the conduct of pushback operations at sea. When asked about the specifics of those operations or screenings at sea, the Government routinely declines to answer. A common argument put forward is reflected in a response to a Senate question on notice about screening process at sea:

*The public’s right to know about the details of on-water operations under Operation Sovereign Borders is balanced against operational security requirements and the safety of all persons involved in operations, including those on board the venture.*<sup>17</sup>

The Australian Government maintains that it reveals information related to these operations when they are no longer operationally sensitive. For example, it provides some information through the

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<sup>10</sup> Azadeh Dastyari and Daniel Ghezelbash, ‘Asylum at Sea: The Legality of Shipboard Refugee Status Determination Procedures’ (2020) 32 *International Journal of Refugee Law* 1, 19.

<sup>11</sup> Azadeh Dastyari and Daniel Ghezelbash, ‘Asylum at Sea: The Legality of Shipboard Refugee Status Determination Procedures’ (2020) 32 *International Journal of Refugee Law* 1, 19.

<sup>12</sup> Michael Grewcock, ‘Back to the Future: Australian Border Policing Under Labor, 2007-2013’ (2014) 3 *State Crime Journal* 102, 111.

<sup>13</sup> Andreas Schloenhardt and Colin Craig, ‘Turning Back the Boats’: Australia’s Interdiction of Irregular Migrants at Sea’ (2015) 27 *International Journal of Refugee Law* 536, 554.

<sup>14</sup> Azadeh Dastyari and Daniel Ghezelbash, ‘Asylum at Sea: The Legality of Shipboard Refugee Status Determination Procedures’ (2020) 32 *International Journal of Refugee Law* 1, 20–24.

<sup>15</sup> Senator Nick McKim, [Answer to Question on Notice AE20-206](#) (8 May 2020).

<sup>16</sup> Regina Jefferies, Daniel Ghezelbash, and Asher Hirsch, ‘Assessing Refugee Protection Claims at Australian Airports: The Gap Between Law, Policy, and Practice’ [2020] SSRN Electronic Journal <<https://www.ssrn.com/abstract=3746085>>.

<sup>17</sup> See for example some recent examples: Senator Nick McKim, [Answer to Question on Notice AE20-206](#) (8 May 2020); or Senator Nick McKim, [Answer to Question on Notice AE20-203](#) (8 May 2020).

monthly Operation Sovereign Borders updates. However, a number of issues with these updates have made them less than reliable. For example, for the first 18 months of Operation Sovereign Borders, the updates (which originally were given weekly) included no information about any of the pushback operations. Until October 2016, the updates provided information about the “off-water reception and processing” of maritime arrivals, although since April 2015, they started to contain some *basic* information about the interception of vessels. Even now there is no information about the turnback and assisted return operations, such as the nationality of passengers or the point of departure.

Appendix 1 provides the most detailed information provided by the Government about turnback operations since the start of Operation Sovereign Borders in September 2013. It was published in response to a Senate Question on Notice. We have added an additional column with further information about the nationality of the passengers and the point of their departure. Our first point of reference was the monthly Operation Sovereign Borders updates as they are the main official source of information about the boat interceptions. Where those updates provide no record or no further information about a specific maritime operation but there are reports in the media or other sources (including occasional ministerial press releases), they have been added.

### **Conduct of the pushback operations:**

Passengers on intercepted boats have been turned back in various ways. They have been turned back on their original vessels that might be repaired or refuelled by Australia; they have been transferred to orange lifeboats purchased by Australia; they have been transferred to wooden boats purchased by Australia; or they have been transferred to Australia’s Customs or Navy vessels, where they have been detained for a period of time before being returned.<sup>18</sup>

The boat turnback operations have been fraught with reports and allegations of abuse, fraud, coercion, and flagrant disregard for the human rights of people who were turned back to the point of departure. In January 2014, Indonesian authorities raised concerns about unseaworthy boats being turned back, leaving local Indonesian villagers to rescue stranded passengers from the ocean.<sup>19</sup> In the same month, people on an intercepted vessel claimed that gunshots were fired by the Australian Navy while intercepting their vessel.<sup>20</sup> A month later three asylum seekers claimed that their hands had been deliberately burned by the Australian Navy during another turnback operation in January 2014.<sup>21</sup> The Australian Government denied all of these allegations. In response to the last allegation, the then Prime Minister Tony Abbott said “Do you believe Australian naval personnel or do you believe people who were attempting to break Australian law? I trust Australia's naval personnel.”<sup>22</sup>

The Australian Government purchased orange lifeboats at a cost of \$7.5 million for use in turnbacks when the original vessel was not seaworthy,<sup>23</sup> until their conspicuous appearance caused diplomatic

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<sup>18</sup> Kaldor Centre for International Refugee Law, *Research Brief: Turning Back Boats* (August 2018) <[https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Research%20Brief\\_Turning%20back%20boats\\_final.pdf](https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Research%20Brief_Turning%20back%20boats_final.pdf)>, p.4.

<sup>19</sup> Michael Bachelard, ‘Australia turns back asylum seeker boat from Indonesia’ *The Sydney Morning Herald* (15 January 2014) <<https://www.smh.com.au/politics/federal/australia-turns-back-asylum-seeker-boat-from-indonesia-20140115-30vds.html>>.

<sup>20</sup> Jonathan Swan and Michael Bachelard, ‘Scott Morrison denies navy fired gunshots while stopping asylum seeker boats’ *The Sydney Morning Herald* (16 January 2014) <<https://www.smh.com.au/politics/federal/scott-morrison-denies-navy-fired-gunshots-while-stopping-asylum-seeker-boats-20140116-30vyy.html#ixzz2rSQU33kX>>.

<sup>21</sup> Michael Bachelard, ‘Investigation: ‘burned hands’ on the high seas’ *The Sydney Morning Herald* (6 February 2014) <<https://www.smh.com.au/world/investigation-burned-hands-on-the-high-seas-20140206-hvbdl.html#ixzz2salkUX2y>>.

<sup>22</sup> *Ibid.*

<sup>23</sup> Sarah Whyte, ‘Cost of Abbott government’s orange lifeboats to tow back asylum seeker trebles to \$7.5 million’ *The Sydney Morning Herald* (20 March 2014) <<https://www.smh.com.au/politics/federal/cost-of-abbott-governments-orange-lifeboats-to-tow-back-asylum-seeker-trebles-to-75-million-20140320-355ci.html>>.

tensions with Indonesia. These lifeboats were then replaced with replicas of fishing boats commonly used throughout Southeast Asia, procured under a ‘multimillion-dollar contract’.<sup>24</sup>

In June 2015, it was alleged that the Australian officials paid \$US30,000 in cash to the crew of an asylum seeker boat to return to Indonesia.<sup>25</sup> While the Government in its initial response to the journalists denied that payments had been made, the Government did not repeat the denial in Parliament and simply refused to answer any questions about the incident.<sup>26</sup> A Senate Inquiry into this matter was not able to complete its inquiry before the dissolution of the Senate for the 2016 general election and only released an interim report with unanswered questions. The main obstacles were the Government’s refusal to produce the documents it was ordered to produce, by claiming public immunity grounds, as well as the refusal of senior government’s representatives to confirm or deny that the payment had occurred. The Secretary of the Department of Immigration and Border Protection stated that the government was “neither confirming or denying it; we are just simply not commenting on it”.<sup>27</sup>

### Case study examples of refoulement at sea

People returned to Indonesia in turnback operations have no opportunity to make protection claims. However, those returned to Sri Lanka and Vietnam in takeback operations have been subject to basic screening procedures while at sea. There are serious doubts about the robustness of those screening procedures as only two Sri Lankans have been identified as having protection claims since the start of Operation Sovereign Borders. This is in stark contrast to the recognition rate of people seeking asylum who arrived by boat and were not turned back even though the cohorts and countries of origin are similar.<sup>28</sup> As mentioned earlier, in 2020 the Australian Government provided an update that it no longer conducts those screening procedures.<sup>29</sup>

During a Senate Estimate hearing in May 2015, and in reference to a takeback operation to Vietnam, the Australian Government stated that it received “a level of assurance [by Vietnamese Government] that there would not be any retribution for their illegal departure from Vietnam”. However, the Government conceded that it had no way of ensuring that, as it does not monitor people who have been returned.<sup>30</sup> There are reports that people in this cohort have indeed faced lengthy jail sentences

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<sup>24</sup> Ben Doherty and Helen Davidson, ‘Orange lifeboats used to return asylum seekers to be replaced by ‘fishing boats’ *The Guardian* (5 March 2015) <<https://www.theguardian.com/australia-news/2015/mar/05/orange-lifeboats-used-to-return-asylum-seekers-to-be-replaced-by-fishing-boats>>; Andrew Probyn, ‘Australia’s fake fishing boats trawl for asylum seekers’ *The West Australian* (27 November 2016) <<https://thewest.com.au/news/wa/australias-fake-fishing-boats-trawl-for-asylum-seekers-nq-ya-124371>>.

<sup>25</sup> Amnesty International, *By Hook or by Crook: Australia’s Abuse of Asylum-Seekers at Sea* (2015) <<https://www.amnesty.org.au/wp-content/uploads/2016/09/Amnesty-report-Australia-abuse-of-asylum-seekers-at-sea.pdf>>; Australian Senate Legal and Constitutional Affairs References Committee, *Payment of Cash or Other Inducements by the Commonwealth of Australia in Exchange for the Turn Back of Asylum Seeker Boats* <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Payments\\_for\\_turn\\_backs](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Payments_for_turn_backs)>. George Roberts, ‘Indonesian police documents detail boat turn-back and alleged payments to people smuggling crew’ *ABC News* (17 June 2015) <<https://www.abc.net.au/news/2015-06-17/indonesian-documents-detail-boat-turnback-and-alleged-payments/6551472>>.

<sup>26</sup> Emma Griffiths, ‘Tony Abbott, Julie Bishop and Peter Dutton refuse to answer Opposition questions about paying people smugglers’ *ABC News* (15 June 2015) <<https://www.abc.net.au/news/2015-06-15/people-smugglers-abbott-bishop-dutton-refuse-discuss-payments/6547224>>.

<sup>27</sup> Legal and Constitutional Affairs Reference Committee, *Payment of cash or other inducements by the Commonwealth of Australia in exchange for the turn back of asylum seeker boats: Interim report* (May 2016), <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Payments\\_for\\_turn\\_backs/Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Payments_for_turn_backs/Interim_Report)>.pp. 3-16.

<sup>28</sup> Dastyari, A. and Ghezlbash, D. (2020). “Asylum at Sea: The Legality of Shipboard Refugee Status Determination Procedures”. *International Journal of Refugee Law*, 32 (1): 1-27, pp.22-24.

<sup>29</sup> Senator Nick McKim, *Answer to Question on Notice AE20-206* (8 May 2020).

<sup>30</sup> Legal and Constitutional Affairs Committee, *Senate Estimates* (25 May 2015), <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22committees/estimate/0c5973fa-5b41-457f-af39-57df2971a205/0000%22>>, p.120.

in Vietnam for illegally leaving the country.<sup>31</sup> Similarly, the Government of Sri Lanka routinely detains people who have been returned by Australia.<sup>32</sup>

Further, there have been a number of cases where people who have been reportedly assessed by Australia as not having protection claims and returned to Sri Lanka and Vietnam subsequently fled their countries and granted protection elsewhere. Two Sri Lankan men and their families who were taken back by Australia to Sri Lanka in July 2014 fled to Nepal less than two months later and were granted refugee status by UNHCR in early 2015.<sup>33</sup>

In 2015, 92 asylum seekers from Vietnam were intercepted by the Australian Navy and held for over one month on vessels on the high seas. Group members were assessed through Australia's 'enhanced screening procedure', which provides a very limited refugee status determination procedure. The asylum seekers stated that they were not provided with an interpreter and that they only realised they were being returned when they reached a port in Vietnam. Upon return, several faced lengthy jail sentences for 'illegally' leaving Vietnam and complained of being severely mistreated while in prison. Two of the families who had been returned decided again to leave Vietnam by boat due to ongoing fear of persecution. Their boat was rescued by Indonesian officials after sinking near Java, Indonesia. They were subsequently taken to UNHCR in Indonesia where they were assessed as facing persecution and were found to be refugees.<sup>34</sup>

These cases highlight the severe inadequacy of Australia's 'enhanced screening' procedures at sea and the flagrant violations of international law by Australia's 'turnback' policies.

#### **People unable to be returned:**

While it might be outside of the scope of this inquiry, a short summary of the situation of people who were unable to be returned since the start of the Operation Sovereign Borders may provide further context.

According to the data provided in response to a Senate Question on Notice, since the start of Operation Sovereign Borders in September 2013, 23 vessels carrying 1,308 people (including 265 children) have not been able to be safely returned and have been taken to regional processing centres.<sup>35</sup> Almost all of those boats arrived in the first three months of Operation Sovereign Borders. Only one vessel could not be returned in 2014 and none since then.

The fate of one boat intercepted by Australia off the coast of Java in November 2013 was subject to a political stand-off between Australia and Indonesia for a few days. Indonesia refused to accept the asylum seekers and Australia eventually took them to Christmas Island.<sup>36</sup>

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<sup>31</sup> Ben Doherty, 'Vietnamese asylum seekers forcibly returned by Australia face jail' *The Guardian* (24 May 2016) <<https://www.theguardian.com/australia-news/2016/may/24/vietnamese-asylum-seekers-forcibly-returned-by-australia-face-jail>>.

<sup>32</sup> Stephanie March, 'Sri Lankan asylum seekers facing criminal investigation after being handed back by Australian authorities' *ABC News* (7 July 2014) <<https://www.abc.net.au/news/2014-07-07/morrison-confirms-sri-lankans-returned-after-interception/5575924>>.

<sup>33</sup> David Corlett, 'Sinhalese asylum seekers' on-water claims accepted by UN' *Swinburne University of Technology* (January 2015) <<https://www.swinburne.edu.au/news/2015/01/sinhalese-asylum-seekers-on-water-claims-accepted-by-un/>>.

<sup>34</sup> Shira Sebban, 'Turned back by Australia, Vietnamese recognised as refugees in Indonesia' *The Sydney Morning Herald* <<https://www.smh.com.au/world/turned-back-by-australia-vietnamese-recognised-as-refugees-in-indonesia-20170608-gwn475.html>>

<sup>35</sup> Senator Nick McKim, *Answer to Question on Notice AE20-203* (8 May 2020).

<sup>36</sup> George Roberts and Jane Norma, 'Indonesia says it will not accept rescued asylum seekers Australia has tried to return' *ABC News* (8 November 2013) <<https://www.abc.net.au/news/2013-11-08/indonesia-says-it-wont-accept-rescued-asylum-seekers/5077974?nw=0>>; Tom Nightingale and Eliza Borello, 'Asylum seekers to be transferred to Christmas Island after 'standoff' between Australia and Indonesia' *ABC News* (9 November 2013) <<https://www.abc.net.au/news/2013-11-09/future-of-asylum-seekers-uncertain/5080858>>.

The final boat that Australia was unable to return had left India and 157 Sri Lankan Tamil people seeking asylum were on board. The boat was intercepted on 29 June 2014 and its passengers were transferred to an Australian vessel which set sail to India to return them. One month of negotiations with Indian authorities ensued while the 157 people remained detained at sea. When India continued to refuse to take this group, Australia initially transferred them to Curtin Immigration Detention Centre in Western Australia on 26 July and a few days later to Nauru in an overnight operation and without the knowledge of their lawyers.<sup>37</sup>

### Case studies of people returned via air

In November 2019, the Guardian Australia reported that two gay journalists from Saudi Arabia had been detained after seeking asylum at an Australian airport.<sup>38</sup> The men fled Saudi Arabia, where homosexuality is illegal and punishable by death, after being outed as gay by Saudi state security. According to their Australian lawyer, the men had already cleared passport control on valid tourist visas before ABF officials in customs inspected their bags and phones and asked if they intended to apply for asylum.<sup>39</sup> When the men indicated that they did intend to apply for asylum, their visas were cancelled and they were detained for two months. Their release came after the extraordinary intervention of the Australian Senate, which passed a motion in their support.

In February 2019, an Australian Broadcasting Corporation (ABC) investigation found evidence that the ABF had turned back at least two young Saudi Arabian women at Sydney Airport after the women requested asylum. ABC reported that one of the women, called Amal, arrived at Sydney Airport in November 2017 when ABF officials became suspicious that she intended to request asylum. After informing Amal that she would not be allowed to enter Australia, Amal made clear her intention to claim asylum to officials, which ABF apparently denied. Amal was then transferred to an immigration detention centre, where she was not offered a lawyer, before being removed to South Korea (where she had boarded her flight to Australia).<sup>40</sup>

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<sup>37</sup> Jason Om, 'Asylum seekers: a timeline of the case involving 157 Tamil asylum seekers intercepted at sea' *ABC News* (4 August 2014) <<https://www.abc.net.au/news/2014-08-04/timeline-157-asylum-seekers-intercepted-at-sea/5647852>>.

<sup>38</sup> Helen Davidson, 'Two gay Saudi journalists 'treated like criminals' in Australia after seeking asylum', *The Guardian* Australia (online, 16 Nov 2019) <<https://www.theguardian.com/australia-news/2019/nov/16/two-gay-saudi-journalists-treated-like-criminals-in-australia-after-seeking-asylum>>.

<sup>39</sup> 'Gay Saudi journalists in Australian detention after seeking asylum', *The Sydney Morning Herald* (19 November 2019) <<https://www.smh.com.au/world/middle-east/gay-saudi-journalists-in-australian-detention-after-seeking-asylum-20191119-p53bvu.html>>.

<sup>40</sup> Sophie McNeill, Sharon O'Neill, and Mary Fallon, 'Australian Border Force accused of targeting women suspected of fleeing Saudi Arabia', *ABC News* (5 February 2019) <<https://www.abc.net.au/news/2019-02-04/border-force-accused-of-targeting-saudi-women-traveling-alone/10768036>>.

## Appendix 1: Boat turnback September 2013-December 2020

| Number                        | Date          | Total number of people on board | Operation <sup>41</sup> | Further information   |
|-------------------------------|---------------|---------------------------------|-------------------------|---|
| <b>Financial Year 2013-14</b> |               |                                 |                         |   |
| 1                             | December 2013 | 49 (2 crew, 17 children)        | Turnback                | Not reported by the Government at that time. <sup>42</sup>  |
| 2                             | December 2013 | 50 (1 crew, 8 children)         | Turnback                | Not reported by the Government at that time.  |
| 3                             | December 2013 | 40 (2 crew, 4 children)         | Turnback                | Not reported by the Government at that time.  |
| 4                             | January 2014  | 47 (2 crew, 13 children)        | Assisted Return         | There was a mention of this in a weekly Operation Sovereign Borders update, stating that the vessel has been intercepted and “is currently at sea under the control of Border Protection Command”. No further update provided.  |
| 5                             | January 2014  | 27 (2 crew, 4 children)         | Turnback                | Not reported by the Government at that time.  |
| 6                             | January 2014  | 58 (2 crew, 2 children)         | Turnback                | Not reported by the Government at that time   |
| 7                             | February 2014 | 38 (2 crew, 3 children)         | Turnback                | Not reported by the Government at that time   |
| 8                             | February 2014 | 28 (2 crew, 2 children)         | Turnback                | Not reported by the Government at that time   |
| 9                             | May 2014      | 20 (2 crew)                     | Turnback                | Not reported by the Government at that time   |
| 10                            | May 2014      | 3 (1 crew)                      | Turnback                | Not reported by the Government at that time   |
| 11                            | May 2014      | 3 (2 crew)                      | Turnback                | Not reported by the Government at that time   |
| <b>Financial Year 2014-15</b> |               |                                 |                         |   |
| 12                            | July 2014     | 41 (1 crew, 9 children)         | Takeback                | <a href="#">Reported in a press release by Minister for Immigration and Border Protection.</a> Passengers were Sri Lankan nationals and were transferred at sea to Sri Lankan authorities. One person was identified as potentially having protection claims but they reportedly elected to depart with other passengers. |

<sup>41</sup> The first four columns of this table are copied from the answer the Australian Government provided to a Question on Notice in March 2020 (Senator Nick McKim, [Answer to Question on Notice AE20-203](#)). The last column provides further information provided by the Australian Government in its [Operation Sovereign Borders monthly updates](#). If other sources used, a link has been provided to their source.

<sup>42</sup> During December 2013 and February 2014, not long after Operation Sovereign Border commenced, there were multiple reports about the conduct of turnback operations and various human rights abuses associated with it. Instead of referencing those articles in this table, we refer to them separately in the report when we focus on allegations of abuse and coercion during the operations.

| Number                        | Date           | Total number of people on board | Operation <sup>41</sup> | Further information   |
|-------------------------------|----------------|---------------------------------|-------------------------|---|
| 13                            | September 2014 | 10 (3 crew)                     | Assisted Return         | Not reported by the Government at that time   |
| 14                            | November 2014  | 37 (6 children)                 | Takeback                | <a href="#">Reported in a press release by Minister for Immigration and Border Protection.</a> Passengers were Sri Lankan nationals and were transferred at sea to Sri Lankan authorities. One person was identified as potentially having protection claims and was not handed over.   |
| 15                            | January 2015   | 3 (2 crew)                      | Assisted Return         | Not reported by the Government at that time   |
| 16                            | February 2015  | 4                               | Takeback                | <a href="#">Reported in a press release by Minister for Immigration and Border Protection.</a> Passengers were Sri Lankan nationals and were transferred at sea to Sri Lankan authorities.  |
| 17                            | March 2015     | 17 (2 crew, 3 children)         | Turnback                | Not reported by the Government at that time   |
| 18                            | April 2015     | 46 (2 crew, 22 children)        | Takeback                | All on board were Vietnamese and were returned there after the Australian Government "worked with the Government of Vietnam".   |
| 19                            | May 2015       | 71 (6 crew)                     | Assisted Return         | No further information. In Operation Sovereign Borders monthly update this has been reported as a June 2015 operation.  |
| <b>Financial Year 2015-16</b> |                |                                 |                         |   |
| 20                            | July 2015      | 46 (18 children)                | Takeback                | Only information provided by the Government is that people on board were returned to country of origin by plane.<br>However, <a href="#">this report</a> provides further information, including that the passengers were Vietnamese, transferred from their boat to an Australian vessel where they were interviewed, then moved to a larger navy ship and taken to an unknown island and were finally returned by plane at night. |
| 21                            | August 2015    | 27 (2 crew)                     | Turnback                | No further information  |
| 22                            | November 2015  | 3 (2 crew)                      | Assisted Return         | No further information  |
| 23                            | November 2015  | 17 (1 crew)                     | Turnback                | No further information provided by the Government.<br>However, <a href="#">the media</a> reported that the boat arrived within 200 meters of Christmas Island and was towed away by the navy.   |

| Number                        | Date           | Total number of people on board | Operation <sup>41</sup> | Further information   |
|-------------------------------|----------------|---------------------------------|-------------------------|---|
| 24                            | February 2016  | 5                               | Takeback                | All on board were Sri Lankan and were returned there after the Australian Government “worked with the Government of Sri Lanka”.             |
| 25                            | March 2016     | 8 (2 crew)                      | Assisted Return         | No further information provided by the Government.<br>However, <a href="#">the media</a> reported that the passengers were from Bangladesh. |
| 26                            | May 2016       | 12 (2 children)                 | Takeback                | All on board were Sri Lankan and were returned there after the Australian Government “worked with the Government of Sri Lanka”.             |
| 27                            | May 2016       | 3 (2 crew)                      | Assisted Return         | No further information  |
| 28                            | June 2016      | 21 (4 children)                 | Takeback                | All on board were Vietnamese and were returned there after the Australian Government “worked with the Government of Vietnam”.               |
| <b>Financial Year 2016-17</b> |                |                                 |                         |   |
| 29                            | August 2016    | 6                               | Takeback                | All on board were Sri Lankan and were returned there after the Australian Government “worked with the Government of Sri Lanka”.             |
| 30                            | March 2017     | 25                              | Takeback                | All on board were Sri Lankan and were returned there after the Australian Government “worked with the Government of Sri Lanka”.             |
| 31                            | June 2017      | 6                               | Takeback                | All on board were Sri Lankan and were returned there after “the Australian Government worked with the Government of Sri Lanka”.             |
| <b>Financial Year 2017-18</b> |                |                                 |                         |   |
| 32                            | December 2017  | 29 (2 children)                 | Takeback                | All on board were Sri Lankan and were returned there after “the Australian Government worked with the Government of Sri Lanka”.             |
| 33                            | June 2018      | 10 (3 crew)                     | Turnback                | No further information  |
| <b>Financial Year 2018-19</b> |                |                                 |                         |   |
| 34                            | September 2018 | 17 (2 children)                 | Takeback                | All board were Vietnamese and “the Australian Government subsequently worked with the Government of Vietnam” to return all those board.     |

| Number                          | Date         | Total number of people on board                                | Operation <sup>41</sup> | Further information  |
|---------------------------------|--------------|--|-------------------------|--|
|                                 |              |  |                         | NB: in Operation Sovereign Borders monthly update this has been reported as an August 2018 operation.  |
| 35                              | May 2019     | 20 (5 crew, 3 children)  | Takeback                | The boat was from Sri Lanka and all on board were Sri Lankan.<br>All were returned to Sri Lanka "in close cooperation with Sri Lankan Government". |
| <b>Financial Year 2019-2020</b> |              |  |                         |  |
| 36                              | July 2019    | 5  | Takeback                | The boat was from Sri Lanka and all on board were Sri Lankan.<br>All were returned to Sri Lanka "in close cooperation with Sri Lankan Government". |
| 37                              | August 2019  | 13   | Takeback                | The boat was from Sri Lanka and all on board were Sri Lankan.<br>All were returned to Sri Lanka "in close cooperation with Sri Lankan Government". |
| 38                              | January 2020 | 8 (2 crew)   | Turnback                | The boat left Indonesia with Indonesian crew and Chinese passengers. All were returned to Indonesia.   |
| <b>Total</b>                    |              |  |                         |  |
| <b>38 vessels</b>               |              | <b>873 people on board, including 57 crew and 124 children</b> |                         |  |