

*Immigration Refugees and Forced Migration*  
by Mary Crock and Laurie Berg  
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Australian migration law changes quite often. The *Migration Act 1958* (Cth) has over 500 sections, and there are 12 schedules attached to the *Migration Regulations 1994* (Cth). There are 141 visa subclasses, not including nine different bridging visa subclasses. Since 2006, the online version of the legislation has been updated 47 times. Apart from the regular legislative changes, there is an ongoing political debate in Australia regarding migrants and refugees.

Informed debate and discussion is valuable, however the debate in Australia is more focussed on people arriving in Australian waters by boat and then claiming asylum. Apart from the indigenous people, all Australians are migrants or descendants of migrants. It is estimated that up to 40 per cent of Australians are first-generation migrants or have one parent who migrated to Australia. Since 1945, Australia has pursued a migration policy which encourages skilled and family migration that has tripled the Australian population in 60 years. Until the end of the White Australia Policy in the early 1970s, most migrants came from the UK and Ireland. With the establishment of a multicultural policy in the 1970s, Australia has received migrants from all over the world. Major cities such as Sydney, Melbourne and Brisbane, for example, are quite 'international' in their mix of people.

Australia has been fortunate in not recently experiencing serious race riots despite this massive change in the population mix. However some political opposition based on race or a perceived 'Australian nationalism' gave rise to political parties such as the One Nation Party. The main political parties accepted a bipartisan position of supporting a non-discriminatory migration policy. The main cause of political dispute in the 1990s and early 2000s revolved around asylum seekers, not migrants.

The former conservative coalition government (1996-2007) built a reputation of being 'strong on border control'. As Australia is an island, asylum seekers need to arrive by air or sea; there are no border

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crossings. Until about 1989, Australia received around 500 asylum cases a year.<sup>1</sup> Most refugees resettled in Australia were picked by Australian officials from UNHCR referrals or the camps in south-east Asia in the 1980s. This tiny caseload suddenly grew to 1000 a month after the Tiananmen Square massacre of 1989, when more than 20,000 Chinese students sought protection in Australia. At the same time, a small group of around 350 Cambodians had arrived by boat and were placed in immigration detention.<sup>2</sup> The years following 1990 saw more and more litigation in the migration portfolio, especially with the law for mandatory detention that was introduced by a Labor Government in 1992 in order to defeat a Federal Court challenge to immigration detention by a group of Cambodian asylum seekers. Although the policy of mandatory detention has been strongly criticised by civil society, especially by legal groups, refugee groups and human rights groups, the policy is maintained to this day.

Australia does not have a series of constitutionally protected rights like most other liberal democracies and common law countries. This was made particularly stark in the cases of *Al-Kateb v Godwin*<sup>3</sup> and *Minister for Immigration and Multicultural Affairs v Al Khafaji*.<sup>4</sup> The High Court upheld the mandatory, and possibly indefinite detention of people without a visa (unlawful non-citizens), as being lawful in Australia. One of the majority, Justice McHugh, lamented this finding as tragic, because there was no Bill of Rights in Australia.<sup>5</sup>

The Coalition also passed a series of restrictive laws affecting asylum seekers, such as the introduction of temporary visas for some refugees, and restrictions on work rights in other cases. At the same time, the skilled and general migration program was increased significantly by the same government. A change of government in 2007 meant a change in some policies, but mandatory detention remains. Refugees featured in the 2010 election due to an increase in arrivals by boat, and one of the slogans of the Liberal Opposition in the 2010 election campaign was ‘stop the boats’.

Given the area of migration and refugee law is so politically charged and changes so often, a legal text book is a major challenge. Professor Crock of the University of Sydney and Laurie Berg of the University of Technology, Sydney took up the challenge and produced *Immigration Refugees and Forced Migration*. This is not Professor Crock’s first such publication. In 1998, Professor Crock wrote *Immigration and Refugee Law in Australia*, also published by

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<sup>1</sup> Mary Crock and Laurie Berg, *Immigration, Refugees and Forced Migration* (Federation Press, 2011) 338–9 [12.32]-[12.38].

<sup>2</sup> *Ibid* 127–8.

<sup>3</sup> (2004) 219 CLR 562.

<sup>4</sup> (2004) 219 CLR 664.

<sup>5</sup> *Al-Kateb v Godwin* (2004) 219 CLR 562, 594 [73].

Federation Press. The 2011 book is a valuable and readable text, and I think it is better set out.

Each paragraph is numbered in a chapter and cross referenced. This is very important in Australian migration law as one case could raise several different issues, such as definitions of dependents, health, and character issues. In the last 13 years there has been considerable litigation in the area, and several attempts by the government to stem the increasing number of appeals to the Federal and High Courts, with the introduction of a privative clause in 2001. The clause was read down in 2003 to provide for review on grounds of jurisdictional error only.<sup>6</sup>

Crock and Berg provide a valuable historical overview going back to Federation in 1901, where one of the earliest Acts of the new Commonwealth of Australia was the *Immigration Act 1901* (Cth). This overview places some of the debates in context and helps to gain understanding of the many legislative changes since 1901. The bulk of the work deals with the current provisions and visa criteria for the 141 subclasses. The risk of writing such a text is that by the time of publication, there are changes to the legislation or new cases. Accepting this limitation, the book remains valuable and will be welcomed by students and practitioners as they struggle to keep up with changes across so many areas of migration law.

The authors do not avoid political controversies and debates, mainly about refugees and asylum seekers. The struggle between the executive and judicial arms of the Commonwealth is also discussed. Case extracts are kept to a minimum, but, given the ready access to cases on the internet, this is not a problem, rather it makes reading easier. The text is to be welcomed and provides a useful tool for students and practitioners researching a migration law problem.

The non-Australian student or practitioner may find some useful jurisprudence especially in the refugee area. Given the lack of a human rights prism for interpreting or measuring law in Australia, however, non-Australians may be perplexed by the attempts to regulate migration so tightly.

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<sup>6</sup> *Plaintiff S157 v Minister for Immigration and Multicultural Affairs* (2003) 211 CLR 476.