Are we a less white Australia today given that the *Immigration Restriction Act* 1901, the cornerstone of the ‘White Australia Policy’, has long been replaced by the *Migration Act* 1958 and the *Migration Regulations* 1994? Are we a less white Australia today, given that the ‘White Australia Policy’ was officially abolished in 1973? Are we a less White Australia today, given that Australia ratified the United Nations Convention Relating to the Status of Refugees in 1954 and in 1978 created a bureaucracy specifically for dealing with refugee issues, through the establishment of the Refugee and Special Programs Branch within the Department of Immigration and Ethnic Affairs, and through the appointment of a Determination of Refugee Status Committee and a Standing Inter-departmental Committee on Refugees?1

When we look at the progress in the laws dealing with refugees in Australia, especially in light of the horrific treatment that Jewish refugees received when they approached Australia for protection from Nazi Germany, we would naturally conclude, that yes, we are a less white Australia today. However, this progress must be re-assessed in light of the changes in Australia’s onshore refugee laws over the last five years, and in light of the rhetoric surrounding these changes. These laws and this rhetoric are reminiscent of those effecting Jewish refugees who needed Australia’s protection before and during World War II. They must be examined with reference to Australia’s role in the United States led invasion of both Afghanistan and Iraq just as the application of the ‘White Australia Policy’ must be examined in light of Australia’s role in World War II..

The changes of the last five years suggest a step back towards a White Australia. They will in time be seen as a dark stain on Australia’s history.

A White Australia

In 1901 the *Immigration Restriction Act* 1901 was enacted “To place certain restrictions on Immigration and to provide for the removal from the Commonwealth of prohibited Immigrants”2. The Act became the cornerstone of the ‘White Australia Policy’. The *Immigration Restriction Act* imposed a ‘dictation test’ as a condition of entry into Australia. The Act prohibited migration into Australia of any person, who was unable to satisfy an officer appointed under the Act that they could write a passage of fifty words in any European language that was selected by the officer.3 The dictation test was selectively

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3 Ibid; s.3 Other “prohibited immigrant” included persons that were likely to become dependant on charity, persons considered to be an ‘idiot’ or ‘insane’, any person suffering from an infections disease of a ‘loathsome or dangerous character’, any person convicted of an offence and sentenced to one year or more in prison three years preceding the attempted entry, prostitutes or ‘persons living on the prostitution of others’.
administered to persons of Asian decent or ‘non-white’ persons. In effect the Act prevented entry into Australia of any person who was of non-European descent.

In June 1938, shortly before the start of World War II, the Australian Cabinet became deeply concerned about the possibility of mass Jewish migration, and thus set Australia’s annual intake of Jewish immigrants at 5100. To ensure that entries did not exceed this number, prospective immigrants were required to disclose in the amended application forms whether they belonged to the Jewish race.

In July 1938 Thomas Walter White, Minister for Trade and Customs attended the Evian International conference which was called to find a solution to the massive numbers of German and Austrian Jews desperate to flee persecution from Nazi Germany. He delivered the message of the Lyon’s Government, stating that Australia was doing all it could in the circumstances:

Under the circumstances, Australia cannot do more, for it will be appreciated that in a young country man power from the source from which most of its citizens have sprung is preferred, while undue privileges can not be given to one particular class of non-British subjects without injustice to others. It will no doubt be appreciated also that, as we have no real racial problem, we are not desirous of importing one by encouraging any scheme of large scale foreign migration.

White was voicing what was probably the prevailing national sentiment. According to a public survey conducted at the time, only 17 per cent of the Australian population supported the large scale immigration of Jews. Correspondence in files reveal that the Australian community were intensely concerned about the likelihood that Jews would take jobs away from ‘Australians’, would monopolise some professions and would refuse to integrate into the ‘Australian’ community.

Although a specific quota for Jewish applicants was set under the guise of providing places for Jewish refugees fleeing persecution, the Lyons Government did not make any concessions for refugees in considering their admission into Australia. The applications were treated like all other applications for migration. Moreover, to address some of the disquiet amongst the community in regards to the monopolisation of certain professions by Jews, the Australian government set rigid quotas for entry by Jews into certain professions, such as the medicine.

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5 Klaus Neumann, Refuge Australia, University of New South Wales Press Ltd, 2004, p.17
6 Quoted in Klaus Neumann, Refuge Australia, University of New South Wales Press Ltd, 2004, p.17.
In December 1938 the Minister for the Interior, John McEwen announced:

The Government has decided, therefore, that on broad lines, the admission of refugees should conform to the same principles as those governing the entry of white aliens generally.

Desperate as is the need of many of these unfortunate people, it is not the intention of the Government to issue permits for entry influenced by the necessity of individual cases. On the contrary, it is felt that it will be possible for Australia to play its part amongst the nations of the world, in absorbing its reasonable quota of these people, while at the same time selecting those who will become valuable citizens of Australia and, we trust, patriots of their new home, without this action disturbing industrial conditions in Australia.9

The 1938 provisions for the intake of refugees were the first ever made by the Australian Government. Between 1938 and 1939, Australia admitted approximately 7000 refugees fleeing Nazi Germany.10 This intake was dismal in comparison to the millions or refugees that were fleeing Nazi Germany and the millions that perished in those years for lack of resettlement options. The Australian response to the plight of these refugees must be subjected to further criticism, given that shortly thereafter, Australia declared war on Nazi Germany.

On 1 September 1939, Germany invaded Poland. Australia declared war on Germany, bringing to an end Australia’s role in resettling refugees from Nazi Germany. German nationals became ‘enemy aliens’. Britain responded to public panic and deported a group of Italian and German refugees, most of whom were Jews, to Australia aboard the Dunera. The Dunera arrived in Australia in 1940 bearing 2,542 male ‘enemy aliens’. The majority of the men aboard were anti-Fascist, and two thirds of them were Jews. However there were on board 250 German Nazis and 200 Italian Fascists.11

The Dunera arrived in Melbourne in September 1940, where 500 men were transferred to the Tatura internment camp, the remainder going to Sydney and later transferred to Hay camps, and finally to Tatura. The men were housed together, and no concessions were made for the fact that the group included both Jews and Nazis.12

The intense criticism about the treatment of these men by the British guards aboard the Dunera, and later their incarceration by the Australian Government, resulted in the British Government expressing regret in October 1940. The British Government then made arrangements to repatriate the men back to Britain, although some chose to remain in Australia.13

Despite the inadequate response to the plight of Jewish refugees by the Australian Government during this period, this chapter in Australia’s Immigration history is of great

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9 Quoted in Klaus Neumann, Refuge Australia, University of New South Wales Press Ltd, 2004, p.17
10 Quoted in Klaus Neumann, Refuge Australia, University of New South Wales Press Ltd, 2004, p.17
12 Ibid.
13 Ibid.
significance, as it was the first time that Australia had significantly participated in the provision of assistance to refugees. Australia’s reaction, although inadequate and riddled with fear and self interest, remains the first example of official policy developed exclusively to address the plight of refugees. This was the beginning of the demise of the White Australia Policy.

The demise of the White Australia Policy:
In the immediate post-war period, Australia entered into an agreement with the International Refugee Organisation, and by 1952, more than 170,000 people were resettled in Australia. In 1952 Australia joined the Inter-governmental Committee for European Migration, and in 1954 Australia ratified the United Nations convention Relating to the Status of Refugees 1952. Between 1956 and 1958 Australia admitted about 14,000 Hungarian refugees. In 1958 Australia replaced the Immigration Restriction Act 1901 with the Migration Act 1958, abolishing the dictation test which had been the key mechanism in the enforcement of the White Australia Policy. In 1973 the ‘White Australia Policy’ was officially abolished.14

A less White Australia
In 1977 an official refugee policy was tabled in Parliament, and in 1978 the bureaucracy for dealing with refugees was created. By 1982 Australia had admitted 54,000 Vietnamese refugees into Australia. In the 1980’s, special concessions were offered to Sri Lankans, Afghans and Iranians due to wars and conflict in those countries. In 1989, the Migration Legislation Amendment Act 1989 reduced discretion in decision-making by establishing rules and criteria within the legislation. Between 1992 and 1995 more than 39,000 refugees from the former Yugoslavia were resettled in Australia.15

This was not purely a one-way process towards a more lenient approach to refugees. In 1990 the Hawke Labor Government announced the establishment of the Port Headland detention centre in Western Australia to accommodate unauthorised arrivals. The Migration Reform Act 1992 correspondingly introduced mandatory detention for ‘unlawful non-citizens’.

Overall, however, it appears that between 1945 and the early 1990’s Australia was moving steadily towards a more inclusive immigration policy. In this period, Australia made great progress in developing a refugee policy and resettling many refugees and Displaced Persons.

However, in 1999 Australia’s approach changed significantly, and the approach adopted during World War II, when refugees were treated as hostile enemy aliens, re-emerged.

1999-2004
Over the past five years, the laws that have governed Australia’s treatment of refugees especially those who have lodged protection visa application in Australia, have been complicated, subject to ongoing change, and often punitive. These laws should be

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15 Ibid.
considered with reference to the country of origin of most of the onshore asylum seekers, given that these laws were designed specifically for them.

The *Migration Act* 1958 and the *Migration Regulations* 1994 prescribe a class of visa known as the protection visa class XA. This visa class is available to refugees recognised as such upon making a valid application for refugee status in Australia. Until October 1999 the visa class contained one subclass known as the Permanent Protection Visa subclass 866 (‘PPV’). The PPV holder would be a permanent resident with access to Australian citizenship after two years.

In 1999, however, the Australian Government’s response to 4175 unauthorised arrivals took the form of Border Protection Legislation Amendment Bill including the *Migration Legislation Amendment Act (No.1) 1999* and the *Migration Amendment Regulations (No.12)*. The amendment to the *Migration Act* and the *Customs Act* created people smuggling offences allowing for the detention, forfeiture, seizure and disposal of ships and aircraft used in people smuggling. Vessels found to be unseaworthy, a risk to safety or navigation or a threat to the environment were now able to be destroyed.

The *Migration Amendment Regulations (No.12)* also introduced the Temporary Protection Visa subclass 785 (‘TPV’). From 20 October 1999 until 1 November 2000, refugees who were not ‘immigration cleared’ (refugees that arrived by boat or plane without a valid visa, or refugees who arrived as stowaways), were granted a TPV instead of a PPV.

The TPV imposes a number of restrictions on refugees that are not imposed on PPV holders, including:

- Protection against persecution expires after three years;
- Refugees have no right to sponsor dependant family members;
- Refugees’ freedom of movement is drastically restricted so she/he cannot travel outside of Australia;
- Refugees are ineligible for on-arrival accommodation or rental bond assistance and government funded English classes;
- Refugees have limited access to Centrelink assistance;
- Refugees can only apply for a Class XA protection visa (8503) unless the Minister for Immigration personally waives this condition or if they held a TPV on or before 27 August 2004;
- Refugees wanting to study at a tertiary institution must pay overseas student rates
- Refugees have relatively no access to government funded legal representation to assist them in making a further application for a protection visa.

On 1 November 2001, the reach of the TPV was widened to include applicants who came to Australia with fraudulent documents or with documents that were obtained fraudulently. Even if these applicant’s are ‘immigration cleared’ for the purposes of the *Migration Act 1958*, they are still only eligible to a TPV in the first instance.

These laws were specifically designed to target boats arriving on Australia’s shores carrying asylum seekers, people almost entirely from Iraq and Afghanistan. Publicly describing these people as ‘queue jumpers’, the Howard Liberal Government cited the existing offshore Humanitarian program as a sufficient mechanism whereby the needs of
Refugees from Iraq and Afghanistan could be addressed by Australia. In 1999 this program admitted 450 individuals from Afghanistan and 1091 individuals from Iraq. In that same year, the US Department of State report on Afghanistan noted that:

The overall human rights situation remained extremely poor, and the Taliban continued to commit numerous serious and systemic abuses. The Taliban’s Islamic courts and religious police, the Ministry for the Promotion of Virtue and Suppression of Vice (PVSV), enforced their ultra-conservative interpretation of Islamic law. The PVSV has carried out punishments such as stoning to death, flogging, public executions for adultery, murder, and homosexual activity, and amputation of limbs for theft. The Taliban were responsible for indiscriminate bombardment of civilian areas. Freedom of religion is restricted severely and Taliban members vigorously enforced their interpretation of Islamic law. Freedom of movement is also limited. Years of conflict have left approximately 259,600 citizens internally displaced, while more than 2.8 million of the country’s population of approximately 25.8 million live outside the country as refugees.16

The 1999 Human Rights Watch report on Iraq noted that:

The Iraqi government continued to engage in a broad array of human rights violations, including mass arrests torture, summary executions, “disappearances”, and forced relocations. In Iraqi Kurdistan armed Kurdish political parties and Iraqi security forces were also responsible for a wide variety of human rights violations, including the arbitrary detention of suspected political opponents, torture, and extrajudicial executions.

No details were available about the fate of approximately 16,500 people reported “disappeared” in the last ten years, mainly ethnic Kurds and Shi’as but including the approximately 600 Kuwaitis reported to have been in Iraqi custody but unaccounted for since the 1991 Gulf War.17

The Howard Government justified the imposition of massive penalties on these refugees by citing the offshore Humanitarian program, that was both lacking in substance, and inaccessible by most of the refugees that eventually arrived on Australia’s shores.

There is no evidence to suggest that people arriving in Australia without valid documents are any less in need of protection than those re-settled in Australia through the off-shore visa process. According to the Human Rights Watch’s ‘Commentary on Australia’s Temporary Protection Visas for Refugees’:

An asylum seeker recognized as a refugee by the Australian system is statistically more likely to be someone facing individualised or ethnically-based threats of persecution within the meaning of the Refugee Convention.18

The Howard Government also justified these laws by demonising the refugees that arrived in Australia seeking our protection. An example of this type of attack is the second

16 US Department of State; Afghanistan 1999; accessible on the World Wide Web at http://www.state.gov/g/drl/rls/hrpt/1999/
Afghanis make up the next biggest national group of arrivals, with a 620 per cent increase in their numbers from the last financial year. One of the factors behind this dramatic increase may be the perception that past illegal arrivals from those countries had been successful in engaging Australia’s protection obligations. These perceptions have also led to expectations.

It was disturbing to hear reports of some of these arrivals asking for " Pert" shampoo immediately upon their arrival. Some of them have arrived with details of medical treatment that they wanted to receive whilst in detention—including dental work. There has been more than one case of demands being made for very expensive medical treatment— with the full expectation that the Australian taxpayer would foot the bill.

Others have been critical of the conditions in which they are being detained.19

Between 1999 and 2002, 9524 unauthorised asylum seekers arrived in Australia, mostly from Afghanistan and Iraq20, and despite the Howard Government's best attempts at labelling these people as liars and opportunists, 8912 were eventually recognised as refugees21, suggesting that it is perhaps the Howard Government who are the liars and the opportunists.

**Australia forgets her International obligations:**

Australia ratified the United Nations Refugees Convention 1952 (the Refugees Convention) in 1954, and the 1967 Protocol shortly thereafter, subsequently adopting the Refugees Convention and Protocol into domestic legislation. The Refugees Convention and Protocol define a refugee as person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion is:

(1) outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or

(2) without a nationality and outside the country of his or her former habitual residence and is unable or, owing to such fear, is unwilling to return to that country.

In a 1999 legislative amendment, the Migration Act was amended to include a provision stating that:

"Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose and is expressed, any country apart from Australia, including countries of which the non-citizen is a national." 22

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21 Ibid.

22 s 36 Migration Act 1958
It is important to note that the definition of a refugee as adopted in Australian legislation requires the refugee to be outside their country of nationality or former habitual residence when they make their application for protection. Hence, a person applying for refugee status directly to the Australian must be outside their country of nationality, meaning they must be either in Australia or in a third country. Furthermore, Australian laws require a person not to have the right to enter or reside in a third country even if this right is temporary.

The justification used to sell the TPV regime is that it exists to deter future refugee applicants who may decide to exercise their Australian legal right as well as their international legal right to apply for protection whilst in Australia. This is inconsistent with Australia’s domestic law and international obligations.

The TPV is granted to persons who arrived in Australia irregularly, as opposed to persons who arrive with a valid visa and then apply for a protection visa. The TPV, as has been candidly stated by the Howard government, is a means of deterrence and a form of punishment for people who arrive irregularly. This approach is a direct breach of Australia’s international obligations under Article 31(1) of the Refugees Convention and Protocol which forbid a Contracting State from penalising a refugee who enters their territory without authorisation.23

Australia is the only country to impose temporary status on refugees who have been through a full asylum determination process. Europe grants temporary protection to asylum seekers as a group if they are fleeing an emergency situation. The United States grants temporary protection to asylum seekers whilst their refugee application is being determined. Once a refugee has undergone a full asylum determination process, they are provided with permanent protection in both Europe and the United States.24

Australia’s approach in requiring re-determination of refugee status contravenes Article 1C of the Refugees Convention and is expressly forbidden by the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.25 This view is echoed in a paper produced by the Department of Immigration Multicultural and Indigenous Affairs (DIMIA). Titled “An Australian Perspective, this paper was prepared as a contribution to the UNHCR’s expert roundtables series. In ‘The Intentions of the Convention’s Founders’, DIMIA provides that:

“once a person is determined by a state to be a refugee according to

23 Article 31 (1) The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Office of the United Nations High Commissioner for Refugees; UNHCR Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees; Geneva Reedited January 1992; p.69.
the Convention’s criteria, he or she remains a refugee, and the state should continue to provide protection and meet the other obligations under the Convention, unless and until circumstances arise in which the cessation clauses can be legitimately brought into effect”.

Article 1C of the Refugees Convention deals with the cessation of the grant of refugee status. Article 1C provides that the Refugees Convention will cease to apply to a refugee if the refugee has voluntarily returned to his country of nationality or the country he fled in fear of persecution, has re-acquired his lost nationality, has acquired a new nationality and is protected by a third country or he can no longer refuse to return to the country he fled because the circumstances in connection with which he was recognised as a refugee no longer exist.

DIMIA further provides that when the cessation clauses are invoked, “the burden of proof should be on the authorities concerned, not the refugee”. The onus always being on the host country to establish change in circumstances is so fundamental that the basis of the fear of persecution has been removed. The Executive Committee Conclusions – Number 69 provide guidelines on how the convention should be applied. They provide that;

“the application of the cessation clause(s) in the 1951 Convention rests exclusively with the contracting States….

Believing that a careful approach to the application of the cessation clauses using clearly established procedures is necessary so as to provide refugees with the assurance that their status will not be subject to unnecessary review in light of temporary changes, not of a fundamental character, in the situation prevailing in the country of origin.”

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26 DIMIA; the Australian perspective on the Refugees Convention. Re Article 1C
27 1C(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
1C(2) having lost his nationality, he has voluntarily re-acquired it; or
1C(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
1C(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
1C(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist continue to refuse to avail himself of the protection of the country of his nationality;
Provided that this paragraph shall not apply to a refugee falling under Section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
1C(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;
Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of pervious persecution for refusing to return to the country of his former habitual residence.”

28 DIMIA; the Australian perspective on the Refugees Convention. Re Article 1C;

“The changes in circumstances should be substantial and lasting. Whether they are the result of rapid developments, or slow and subtle reforms over a number of years, authoritative evidence should exist that the changes are:
- substantial, in the sense that the power structure under which persecution was deemed a real possibility no longer exists;
- effective, in the sense that they exist in fact, rather than simply promise, and reflect a genuine ability and willingness on the part of the home country’s authorities to protect the refugee; and
- durable, rather than transitory shifts which last only a few weeks or months (although long term possibilities, for example an adverse electoral result in a year’s time, may be considered irrelevant).
The TPV regime shifts the onus on the applicant. The TPV holder bears the onus to prove to the DIMIA that he/she is still in need of Australia’s protection, three years after fleeing the persecutory circumstances.

**Change to the TPV regime**

Shortly before the Howard Government committed Australia to the United States led invasions of Afghanistan, the laws effecting refugees fleeing the tyrannical regime that Australia was helping to overthrow, were changed to impose harsher penalties.

As of the 27 September 2001, any refugee with a TPV that applied for a further protection visa on or after the 27 September 2001 was required to satisfy a new regulations commonly referred to as the ‘7 day rule’.29

If a refugee was found to still need Australia’s protection after approximately three years, but has stayed in a country on their way to Australia for 7 days or more, and during that period she/he had the means and opportunity to obtain effective protection from the Government of that country, or through the offices of the UNHCR in that country, then she/he will only receive another TPV. The Minister for Immigration has the power to waive this requirement. This rule was created to catch refugees who were allegedly ‘forum shopping’.

The 7-day rule imposes a further penalty on TPV holders who try to access permanent protection, preventing the grant of permanent protection if the rule is not satisfied.

In reality, the DIMIA has rarely applied the 7-day rule, as refugees who arrived in Australia irregularly, almost never had the means or the opportunity to apply for protection from a transit country. Nor were the offices of the UNHCR available to them in the transit countries. Hence they were not ‘forum shopping’.

Between 2001 and 2002, shortly before the Howard Government committed Australia to the United States led invasion of Iraq, they admitted 881 Iraqi individuals into Australia under the offshore Humanitarian program. This was the lowest intake of Iraqi refugees in ten years.30

Australia joined the US invasion of Iraq in March 2003, and on 28 August 2003 the *Migration Amendment Regulations 2003* (no 6) (MAR 2003 No.6) took effect. These amendments brought in significant changes for onshore protection visas.

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29Regulation 866.215
(1) if the applicant has held a subclass 785 (Temporary Protection) visa since last entering Australia, the applicant, since leaving his or her country, has not ever resided, for a continuous period of at least 7 days, in a country in which the applicant could have sought and obtained effective protection;
(a) of the country; or
(b) through the offices of the United Nations High Commissioner for Refugees located in that country.
(2) The Minister may waive the requirement under subclass (1) if the Minister is satisfied that it is in the public interest to do so.

They widened the application of TPV’s to apply to all on-shore refugee applicants, including applicants who had been immigration-cleared and did not use fraudulent documents to enter Australia.

They allowed visas under subclasses 447, 451 and 785 to be granted for shorter periods specified by the Minister for Immigration.

They removed the application of the ‘7-Day rule’ for approximately 2400 TPV holders who were granted a TPV prior to 27 September 2001 and applied for further protection visa after 27 September 2001. The ‘7-Day rule’ remained intact for all TPV holders.

The regulations were disallowed by the Senate on the 9 October 2003, this being the result of intense lobbying of the Australian Labor Party by the Democrats and the Greens.

During the period that the regulations were in effect, DIMIA granted a number of Afghan refugees who were housed in detention centres in Nauru and Indonesia visas to enter and remain in Australia. These refugees were reunited with family members who were TPV-holders in Australia. The effect of these regulations was that family members who had been recognised as refugees independently were granted visas that were valid for a much shorter period than the visa class provides in the Migration Regulations 1994. The visas were granted for the same time period remaining on the TPV of the family member already in Australia. In some cases subclass 451 visas (usually a 60-month visa) were valid for only two or three months.

DIMIA argued that this approach allowed family groups to have their visa applications assessed together. However, it also meant that after being recognised as refugees independently - in some cases more than two years ago- refugees were granted visas for exceptionally short periods.

Thus visa periods which have been prescribed in the Migration Regulations 1994 were drastically shortened by the Minister for Immigration through the exercise of a discretion created in the new regulations.

These regulations did not remove the 7-Day rule for all TPV holders. The 7-Day rule was removed for only some TPV holders, maintaining the 7-Day rule for all refugees who were granted a TPV after 27 September 2001.

The changes threatened to reduce Australia’s on-shore humanitarian program to mainly a system of temporary protection. The regulations could not be split, thus they were disallowed entirely despite the advantage of removing the 7-Day rule for some TPV holders.

Migration Amendment Regulations 2004 (No.6) 2004 No.269 came into effect on 27 August 2004. The new regulations allowed former TPV holders (refugees who have had their applications for further Protection Visas rejected) and TPV holders on the 27 August 2004 to apply for some mainstream visas onshore. The mainstream visas are not available to refugees who were granted a TPV after the 27 August 2004. This suggests that the changes are designed to satisfy community groups who have been lobbying the Government to allow TPV holders in their communities to apply for mainstream visa categories.
The regulations also introduced a new temporary visa, the Return Pending visa, that is valid for 18 months after an application for further protection has been refused by DIMIA or if review of decision is sought, when the application has been refused by the Refugee Review Tribunal. As the name of the visa suggests, this visa is valid pending the return of the applicant to the country they fled fearing persecution.

These changes were reported by the media as guaranteeing permanent residency for all TPV holders. On the contrary, many of the mainstream visa categories are also temporary and subject to various limitations such as dependence on an employer or an Australian citizen spouse. Hence, the permanent protection visa remains the best visa outcome for TPV holders.

The media hype further suggests that these changes were designed to mislead the electorate, as the information reported was both misleading and irresponsible. These reports also mislead a refugee community who have very limited access to legal advice and assistance, and are caught in a convoluted legal regime that is constantly changing and becoming even more complicated.

Changes in refugee law over the past five years have been administered through the introduction of regulations which become effective immediately, and without any warning or consultation with the communities or the service providers effected by the changes.

**Conclusion**

Australia’s response to the plight of Jewish refugees before and during World War II was inadequate and grossly self interested. However, it did pave the way for Australian participation in international refugee assistance forum. From 1945 to 1982, approximately 400 000 refugees and Displaced Persons were resettled in Australia.31

During the late 90s, however, Australia forgot these international obligations. The Government once again set about demonising refugees, and treating them as a threat to Australia’s welfare. At its most hysterical and absurd, the Howard Government’s rhetoric suggested that refugees arriving irregularly in Australia had sold everything they owned, leaving behind their families and the only country and community most of them had ever known, paid all of the money they had managed to gather from selling everything they owned, travelled thousands of kilometres through some of the worlds harshest terrain, lived in hiding under lock and key in strange countries, then travelled on an overcrowded boat without food or water, all for the privilege of using Pert shampoo and having expensive dental work done in Australia.

The Border Protection Legislation that created TPV’s introduced its changes under the guise of national security, implying that refugees were a threat to Australia’s security in a world that is apparently riddled with terrorism. Indeed, an explicit link between refugees and terrorists was infamously drawn by then defence minister Peter Reith in an interview on ABC television during the 2001 election campaign. The fact that Afghani and Iraqi refugees were themselves fleeing the regimes that were apparently harbouring terrorists

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seemed to escape the Government’s attention, just as it did in 1940, when Jewish refugees were treated as enemy aliens, despite the fact that they were fleeing Nazi Germany.

Australian response to the plight of Afghan and Iraqi refugees has been grossly inadequate, especially in light of Australia’s subsequent involvement in the US led invasion of both Afghanistan and Iraq. In the lead up to war on both of these countries, the Howard Government eloquently and powerfully accused the Governments of these countries of gross human rights violations against their own citizens. Yet when it was approached for protection by refugees fleeing these countries, Australia’s response to offshore applicants was insufficient, and the treatment of onshore applicants punitive and disgraceful.

In 1940, the Lyons Government’s did not believe that the Australian community was able to adjust to the presence of persons of non-white origin, a belief that had it’s roots in prevailing national sentiment at the time. The White Australia Policy was cited as a means of protecting Australia from a “real racial problem”. Australia’s participation in the resettlement of Jewish refugees was deemed to equate to importing such a problem. However, upon declaring war on Nazi Germany, concerns over race were bundled together with fear of Nazism, thus leading to an appalling outcome in which Jewish refugees were labelled as ‘enemy aliens’, and treated as such.

Despite this, the decades that followed were marked with significant progress towards a more humane approach in Australia’s immigration policy. Unfortunately, in 1999 the Howard Government took a leap back towards the White Australia Policy, mirroring the Lyons Government’s approach towards refugees. In both cases, this approach had its roots in gaining political advantage by playing the ever-potent politics of race. When Pauline Hanson’s One Nation party first suggested the Temporary Protection Visa model in 1998, the Howard Government’s Minister for Immigration Phillip Ruddock declared the approach “highly unconscionable in a way that most thinking people would clearly reject”.32 In time, however, an opportunity for electoral gain was identified in these sentiments. The Government realised that fear could be exploited to gain political advantage. It thus proceeded to shamelessly amend refugee law in Australia under the guise of ‘border protection’. Refugees were thus treated as ‘terrorists’ and Australians were coached to fear and to hate them.

Australia’s invasion of Afghanistan and Iraq should have ignited some compassion for refugees fleeing these ‘tyrannical regimes’. Sadly, the opposite is true. Australian’s were not offered the benefit of the doubt by the Lyons Government who believed that we were inherently racist and easily manipulated by fear. We have again been denied this benefit by the Howard Government. Unfortunately, the people who have been defamed and subjected to gross human rights violations by the Australian Government in this process, have been refugees.

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32 Minister for Immigration and Multicultural and Indigenous Affairs Phillip Roddock, 1998