Data Quality and the Law of Refugee Protection in Australia

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Australia’s policies towards asylum seekers who arrive in the country by air and seek protection at or before ‘immigration clearance’ at airports have been largely overshadowed by debates over offshore detention, processing, and interdiction policies. Immigration clearance is a physical zone, in these cases, at an airport, that every passenger must pass through before being allowed to enter Australia. Yet, even when asylum seekers who arrive by plane do receive Parliamentary or media attention, it relates generally to the backlog of individuals who have successfully passed through immigration clearance and subsequently lodged an asylum application. A glance at data provided by the Department of Home Affairs (‘DHA’) in Senate Estimates and other contexts seems to suggest that the lack of focus on travellers seeking protection at or before immigration clearance at airports finds at least some support in the smaller number of individuals applying for protection at Australian airports, relative to maritime arrivals. In October 2017, in response to a question by Senator Kim Carr, the Department of Immigration and Border Protection (‘DIBP’) reported that only 10 people had arrived at an international airport and claimed asylum in the first three months of the financial year in 2017 through 2018.

However, a recent decision by the DHA under the Freedom of Information Act 1982 (Cth) (‘FOI Act’) indicates that statistics previously provided to Parliament by the DIBP, now part of the DHA, are likely deficient. On 6 February 2019, the DHA issued a decision under the FOI refusing access to the ‘number of individuals who have made protection claims before, or at, immigration clearance at airports since 2008’, because the agency asserted that it did ‘not hold existing documents as falling in the scope of the request’. After conducting an internal review, the DHA confirmed that:

referrals for persons seeking to engage Australia’s protection claims are in fact recorded in the relevant system under one of two separate codes. One of these codes is specific to Refugee Claims, the other is for Manual Referrals/Reason Unknown. A very low number of referrals have been recorded under the code for Refugee Claims and as there is no distinct
way of determining which of the Manual Referrals may have related to protection claims, since it is not clear how the DHA’s decision processes link to the outcomes of protection claims, or of any other legal claim.

In other words, although the DHA records referrals for persons seeking protection at Australian airports, poor data collection is manifest in the statistic that the ‘total number of persons raising protection claims at Australia’s borders remains undetermined’.10

This article explores the legal compliance consequences of poor data quality through an information systems lens. Data quality encompasses a variety of characteristics,12 including accuracy, completeness, and currency.13 Data lacking any of these dimensions can have a significant impact on data quality. This article explores the impact of the data quality dimension of completeness in the context of the DHA’s operations targeting asylum seekers who arrive at Australian airports from abroad. The piece begins by situating asylum seekers within the border continuum and Protection Visa legal and policy framework. The work then describes aspects of the DHA’s current data collection process and examines how the current process fails to attain the data quality characteristic of completeness.14

The article concludes with an examination of the legal consequences of poor data quality, as well as a call for increased transparency and accountability so that Parliament and the Australian public may accurately judge the DHA’s compliance with international and domestic legal obligations.

Entry screening and the Department of Home Affairs data collection practices

Australia has undertaken a number of inter-national legal obligations in relation to refugees and asylum seekers by becoming party to the 1951 Refugee Convention and 1967 Protocol.15 Foremost among those obligations is the fundamental obligation of non-refoulement and, though Australia has formally removed the obligation of non-refoulement from the context of the concept of ‘unlawful non-citizens’,16 Australian policy still recognises and seeks to implement the obligation for non-citizens seeking protection at the airport.17 The framework includes, but is not limited to, the creation of Protection Visas and complementary protection for individuals who are ‘screened-out’ by the DHA’s legal obligations.18 The Australian approach to border control constrains and significantly impacts the protection framework, manifesting in a complex, multi-agency effort of deterring asylum seekers while insisting that those who enter Australia do so in pursuit of refugee resettlement. The Australian Border Force (‘ABF’), formed in 2015 by combining the DIBP and the Australian Customs and Border Protection Service (‘ACBPS’), sits at the centre of the deterrence framework as the operational enforcement arm of the DHA. The ABF approaches the border as a ‘strategic national asset, a complex continuum that encompasses the physical border, [] offshore operations, and [] activities in Australian maritime and air domains’.19 The ABF’s legal and informational framework sustains the border continuum, beginning with the requirement to obtain a visa for travel to Australia.20 When an interna-tional traveller arrives at an Australian airport with a valid visa, they must pass through ‘immigration clearance’ before being allowed to enter Australia.21 If the traveller seeks protection at, or before passing through, immigration clearance, they are referred to a secondary immigration area for a review of the data collected does not appropriately reflect the purpose of entry screening.22 This section examines the DHA data collection regarding contextual dimensions of the task.28 In exam-ining whether the DHA can be said to comply with domestic and international legal obligations towards asylum seekers, the context includes legal obligations which must inform data collection. Where the data do not reflect that context, data deficiencies may result.29 According to the DHA, ‘the purpose of entry screening is to determine whether a non-citizen should remain in Australia, pending an assessment against Australia’s protection obligations, on account of the reasons the non-citizen has presented for why they cannot return to their home country or country of usual residence’.30

Data quality

This section examines the DHA data collection processes, having regard to the data quality dimension of completeness.31 Data completeness, or the ‘extent to which data are of sufficient breadth, depth, and scope for the task at hand’, depends upon the contextual dimensions of the task.32 In examining whether the DHA can be said to comply with Australian legal obligations for the purpose of their visa (eg work, study), their visa may be cancelled and the immigration clearance is refused.34 If the traveller has been refused immigration clearance, the DHA’s legal obligations require that the ABF second interview an individual to determine whether the individual should be ‘screened-in’ and allowed to lodge a Tempor-ary Protection Visa application.35 There is no mechanism for judicial review of the screening decision, which means that an individual ‘screened-out’ faces rapid removal from Australia, without regard to the non-refoulement obligation.36

Second, ABF officials must evaluate whether an individual’s reason for visiting Australia aligns with the purpose of their visa to determine whether the individual should be ‘immigration cleared’.37 Where an individual seeks to enter Australia to apply for asylum, their visa may be cancelled. Thus, the reason for visa cancellation is highly relevant to a deter-mination as to whether the individual was prop-erly screened. This article explores whether the DHA actually complied with its legal obligation to determine whether the individual was given the opportunity to lodge an applica-tion for such protection. However, according to the DHA, ‘[departmental systems are unable to aggregate data by reason for cancellation decision. A call for increased transparency and accountability so that Parliament and the Australian public may accurately judge the DHA’s compliance with international and domestic legal obligations.

Transparency and accountability

Quality data are critical to administrative policy formation and implementation and legal compliance. Poor data quality not only ‘compromises decision-making’,38 it ‘may be the single biggest hindrance to developing sound strategy’.39 Since at least 2005, the DHA, ABF, and predecessor agencies have consistently failed to implement sound record keeping and data quality practices.40 The department has repeatedly acknowled-ged these failures, stating in 2016 that: These issues aren’t new and have been highlighted in various reviews over the last decade resulting in:

- Failure to comply with legislative requirements due to poor information and records management policies, systems and practices; [and]
- Failure to deliver on strategic objectives and priorities (risk and crisis management).41 These endemic problems have signifi-cant consequences, not only for questions related to legal compliance, but for the DHA’s legal obligation to determine whether the DHA has actually provided accurate and complete information to Parlia-
ment and to the Australian public as part of the democratic process. Without a complete understanding of the number of individuals who have sought protection at Australian airports, or how many individuals have had their visas cancelled due to raising a protection claim – Australia cannot be said to comply with its international and domestic legal obligations. Failing this basic test not only impairs vulnerable individuals in need of international protection, it impairs the relationship between agency accountability and Parliamentary oversight.

References

Migration Act 1958 (Cth) s 172.
2 'Onshore protection is people who have come to Australia on another visa type and then subsequently applied for protection in Australia.’ Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, 9 August 2018, 68 (Luke Mansfield).
3 Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 23 October 2017 (Evidence to Senate, 23 October 2017 (P.3).
4 The full request sought: (1) The number of individuals who have made protection claims before, or at immigration clearance at airports since 2008, broken down by fiscal year; (2) The number of those individuals granted Protection Visas since 2008, broken down by fiscal year; and the individual’s country of origin and airport, where the claim was made: Department of Home Affairs, Number of Protection Claims Before or At Immigration Clearance (FOI Request, 28 November 2018) (copy on file with author).
5 Department of Home Affairs, Number of Protection Claims Before or At Immigration Clearance (FOI Decision, 6 February 2019) (copy on file with author).
6 Department of Home Affairs, Number of Protection Claims Before or At Immigration Clearance (FOI Decision on Internal Review, 27 May 2019) (copy on file with author).
7 Ibid.
9 Missier and Carlo Batini (n 11) 6.
11 Redman, ‘The Impact of Poor Data Quality’ (n 13) 80.
13 1991 Convention (n 10) art 33.
14 Migration Act 1958 (Cth) s 197C.
15 Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 23 October 2017 (Evidence to Senate, 23 October 2017).
17 The full request sought: (1) The number of individuals who have made protection claims before, or at immigration clearance at airports since 2008, broken down by fiscal year; (2) The number of those individuals granted Protection Visas since 2008, broken down by fiscal year; and the individual’s country of origin and airport, where the claim was made: Department of Home Affairs, Number of Protection Claims Before or At Immigration Clearance (FOI Request, 28 November 2018) (copy on file with author).
18 Department of Home Affairs, Number of Protection Claims Before or At Immigration Clearance (FOI Decision, 6 February 2019) (copy on file with author).
19 Department of Home Affairs, Number of Protection Claims Before or At Immigration Clearance (FOI Decision on Internal Review, 27 May 2019) (copy on file with author).
20 Thomas C Redman, ‘The Impact of Poor Data Quality’ (n 13) 80.
21 The Australian Government recognises this Act be the only source of the right of non-citizens to so enter or remain. Immigration and Border Protection Act 1958 (Cth) ss 35(a) and 36(2)(aa). The 1951 Convention (n 15) art 33. Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 23 May 2018, 167 (Christine O’Dwyer) (Evidence to Senate, 22 May 2018); Procedural Instruction (n 23) 10.
22 Evidence to Senate, 22 May 2018 (n 23) in response to Question on Notice No 54, Portfolio Question No BE18/100.
23 Redman, ‘The Impact of Poor Data Quality’ (n 13) 81.
24 Ibid.
26 Migration Act 1958 (Cth) s 197C.
27 Redman, ‘The Impact of Poor Data Quality’ (n 13).
29 Data deficiencies are defined as the inconsistencies between the view of a real-world system that can be inferred from a representing information system and the view that can be obtained by directly observing the real-world system: ibid 7, citing Yar & Yar (n 25) 13.
30 Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 23 May 2018, 167 (Christine O’Dwyer) (Evidence to Senate, 22 May 2018); Procedural Instruction (n 23) 10.
31 Scannapieco, Missier and Batini (n 11) 8.
32 Department of Home Affairs, Procedural Instruction (n 23) 10.
33 Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 22 May 2018, 167 (Christine O’Dwyer) (Evidence to Senate, 22 May 2018); Procedural Instruction (n 23) 10.
34 Department of Home Affairs, Number of Protection Claims Before or At Immigration Clearance’ (FOI Decision on Internal Review, 27 May 2019) (copy on file with author).
35 Ibid.
36 Ibid.
37 Procedural Instruction (n 23) 12.
38 Evidence to Senate, 22 May 2018 (n 23) in response to Question on Notice No 54, Portfolio Question No BE18/100.
39 Redman, ‘The Impact of Poor Data Quality’ (n 13) 81.
40 Ibid.
42 Australian National Audit Office, Integration of DIBP and ACBPS (n 41).
43 The Australian National Audit Office notes that the agency has acknowledged these serious problems: the Department is aware of the record keeping issues. A November 2016 submission to the Executive Committee entitled Records and Information Action Plan 2016-20 stated: ‘Since 2006 at least 17 reviews of various aspects of records and information management (IM) have been completed, all of which identify significant scope for improvements assisted by the collective review recommendations contained in it. In response, the Department has to date undertaken each; a lack of sustained follow through, which in turn has left the Department’s IM in a critically weak state.’ Australian National Audit Office, Integration of DIBP and ACBPS (n 41) 29, citing Department of Immigration and Border Protection, Submission to Executive Committee, Records and Information Action Plan 2016-20 (November 2016) (emphasis added).
Boats and borders: Australia’s response to refugees and asylum seekers