2019

Data Quality and the Law of Refugee Protection in Australia

Regina Jefferies
Western Washington University, jefferr6@wwu.edu

Qantas Airbus A330-303 (VH-QPF) at Perth International Airport (mailer_diablo/Wikimedia Commons)

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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'[1] 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.[2] A glance at data provided by the Department of Home Affairs ('DHA') in Senate Estimates[3] and other contexts[4] 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.[5] 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.[6]

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',[7] because the agency asserted that it did 'not hold existing documents as falling in the scope of the request'.[8] 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, the total number of persons raising protection claims at Australia's borders remains undetermined.[9]

In other words, although the DHA records referrals for persons seeking protection at Australian airports, poor data collection practices mean 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 can be defined as 'fitness for use'[11] and 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.

I Entry screening and the Department of Home Affairs data collection practices

Australia has undertaken a number of international 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, or the requirement not to return an individual to a place where they might be persecuted or subjected to other serious harm.[16] The domestic framework intended to give effect to these obligations can be found primarily within the *Migration Act of 1958* and, though Australia has formally removed the obligation of non-refoulement from consideration in the context of the removal of 'unlawful non-citizens',[17] Australian policy still recognises and seeks to implement the obligation for non-citizens seeking protection at the airport.[18] The framework includes, but is not limited to, the creation of Protection Visas and complementary protection for individuals to whom Australia owes protection obligations.[19] 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 in need of protection pursue a process 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'.[20]

A substantial legal and informational framework sustains the border continuum, beginning with the requirement to obtain a visa for travel to Australia.[21] When an international traveller arrives at an Australian airport with a valid visa, they must pass through 'immigration clearance' before being allowed to enter Australia.[22] If the traveller seeks protection at, or before passing through, immigration clearance, they are referred to a secondary immigration area for a review of whether the purpose of their visa 'aligns with [their] intention for entry to Australia'.[23] Where the ABF official finds that the individual has come to Australia to seek asylum, rather than for the purpose of their visa (eg work, study), their visa may be cancelled and the immigration clearance is refused.[24] If the traveller has been refused immigration clearance, the ABF official conducts a second interview to determine whether the individual should be 'screened-in' and allowed to lodge a Temporary Protection Visa application.[25] 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.[26]

II Data quality

This section examines the DHA data collection processes, having regard to the data quality dimension of completeness.[27] 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.[28] In examining 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 may also be incomplete where values are missing because the values were not included, though they should have been specified.[31] In the entry screening process, ABF officials record data at several key intervals — two of which are examined here. First, officials record an 'inward movement and referral'[32] for every traveller who claims protection at an airport. Second, officials record whether a visa has been cancelled in immigration clearance.[33] Information obtained through FOI and provided by the DHA in Senate Estimates reveals critical problems with both points of collection regarding contextual dimensions of the data and missing values.

First, in the Decision on Internal Review, the DHA confirms that 'referrals for [individuals] 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.'[34] Yet, protection claims may be recorded as a referral under either code and 'there is no distinct way of determining which of the Manual Referrals may have related to protection claims...'[35] As the data are likely missing values and cannot be said to be complete, 'the total number of [individuals] raising protection claims at Australia's borders remains undetermined.'[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 determination as to whether the individual was properly evaluated by the DHA for potential protection claims, as well as whether the individual was given the opportunity to lodge an application for such protection. However, according to the DHA, '[d]epartmental systems are unable to aggregate data by reason for cancellation decision'.[38] As a result, the DHA cannot accurately track whether it is complying with the obligation to provide an individual whose visa has been cancelled at the airport with the opportunity to lodge a protection application. In other words, the data collected does not appropriately reflect the context of the task of compliance with the DHA's legal obligations.

III Transparency and accountability

Quality data are critical to administrative policy formation, implementation, and legal compliance. Poor data quality not only 'compromises decision-making',[39] it 'may be the single biggest hindrance to developing sound strategy'.[40] Since at least 2005, the DHA, ABF, and predecessor agencies have consistently failed to implement sound record keeping and data quality practices.[41] The department has repeatedly acknowledged these failures, stating in 2016 that:

> These issues aren't new and have been highlighted in various reviews over the last decade resulting in:
> - Poor decision making and advice to key stakeholders or for individuals;
> - Failure to comply with legislative requirements due to poor information and records managements policies, systems and practices; [and]
> - Failure to deliver on strategic objectives and priorities (risk and crisis management).[42]

These endemic problems have significant consequences, not only for questions related to legal compliance,[43] but for assessing 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 imperils vulnerable individuals in need of international protection, it imperils the relationship between agency accountability and Parliamentary oversight. ⚖

Regina Jefferies is a Scientia PhD Scholar and Teaching Fellow at the University of New South Wales, and an Affiliate of the Kaldor Centre for International Refugee Law. She has worked as a Consultant for the Washington Regional Office of UNHCR and previously held the position of Visiting Assistant Professor at the University of Minnesota Law School, where she taught in the Detainee Rights Clinic and helped to lead a team of lawyers in challenging the Trump Travel Ban.

References

1 *Migration Act 1958* (Cth) s 172.

2 'Onshore protection is people who have come to Australia on another substantive visa and then subsequently applied for protection in Australia': Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 8 April 2019, 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').

4 44 persons applied for a Protection Visa after being refused immigration clearance in 2013-2014, 34 persons applied for a Protection Visa after being refused immigration clearance in 2014-2015, and 40 persons applied for a Protection Visa after being refused immigration clearance in 2015-2016: Department of Immigration and Border Protection, 'Statistics for Unauthorised Air Arrivals' (FOI Response, 2017) 1 (copy on file with author).

5 In 2018, the ABF provided a table of boat interceptions that confirmed 37 'takebacks' for Financial Year 2016–2017 and 29 'takebacks' for Financial Year 2017–2018: Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 21–24 May 2018, 4; '[T]he Australian Government intercepted a maritime people smuggling venture from Sri Lanka with 20 Sri Lankan nationals on-board. None of the potential illegal immigrants or crew aboard the vessel engaged Australia's protection obligations, and all 20 people were successfully returned to Sri Lanka in close cooperation with the Sri Lankan Government': Australian Border Force, 'Operation Sovereign Borders Monthly Update: May 2019' (Media Release, 12 June 2019) <https://newsroom.abf.gov.au/channels/Operation-Sovereign-Borders/releases/operation-sovereign-borders-monthly-update-may-2019>.

6 The data was reported to be current as at 30 September 2017: Evidence to Senate, 23 October 2017 (n 3).

7 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).

8 Department of Home Affairs, *Number of Protection Claims Before or At Immigration Clearance* (FOI Decision, 6 February 2019) (copy on file with author).

9 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).

10 Ibid.

11 Monica Scannapieco, Paolo Missier and Carlo Batini, 'Data Quality at a Glance' (2005) 14(14) Datenbank-Spektrum 6, 7, citing Richard Y Wang, 'A Product Perspective on Total Data Quality Management' (1998) 41(2) *Communications of the ACM* 58.

12 Ibid 6.

13 Thomas C Redman, 'The Impact of Poor Data Quality on the Typical Enterprise' (1998) 41(2) Communications of the ACM 79, 80 ('The Impact of Poor Data Quality'). See also Thomas C Redman, Data Quality: *The Field Guide* (Digital Press, 2001) ('*Data Quality*'). Data are multi-dimensional, and the four dimensions mentioned here are not exclusive: Scannapieco, Missier and Batini (n 11) 6.

14 Redman, 'The Impact of Poor Data Quality' (n 13) 80.

15 *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) ('1951 Convention'); *Protocol Relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) ('1967 Protocol'). See also *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 3 ('CAT'); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 7 ('ICCPR'); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37 ('CRC'); *Convention on the Right of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 15 ('CRPD').

16 *1951 Convention* (n 15) art 33.

17 *Migration Act 1958* (Cth) s 197C. Despite this legislative provision, the Australian Government recognises its international legal obligation of non-refoulement: Department of Home Affairs, 'The Administration of the Immigration Program' (Background Paper, 2nd ed, April 2019) 10.

18 Department of Immigration and Citizenship, *Entry Screening Guidelines* (August 2013) 5.

19 *Migration Act 1958* (Cth) ss 35(a) and 36(2)(aa).

20 Department of Immigration and Border Protection, *Strategy 2020* (2015) 2.

21 *Migration Act 1958* (Cth) s 4(2): 'To advance its object, this Act provides for visas permitting non-citizens to enter or remain in Australia and the Parliament intends that this Act be the only source of the right of non-citizens to so enter or remain.'

22 Department of Home Affairs, *Annual Report 2017–18* (Report, 2018) 45; *Migration Act 1958* (Cth) ss 166, 172.

23 Department of Home Affairs, *Protection Claims at the Border* (Procedural Instruction, 21 November 2018) 12 ('Procedural Instruction').

24 Ibid 13.

25 Individuals refused immigration clearance at airports ('unlawful air arrivals') may only request a Temporary Protection Visa (TPV) or Safe-Haven Enterprise Visa (SHEV): Department of Home Affairs, *Procedural Instruction* (n 23) 14; *Migration Regulations 1994* (Cth) sch 1 pt 4 item 1401(3)(d).

26 *Migration Act 1958* (Cth) s 197C.

27 Redman, 'The Impact of Poor Data Quality' (n 14) 80. See also Redman, *Data Quality* (n 13).

28 Richard Y Wang and Diane M Strong, 'Beyond Accuracy: What Data Quality Means to Data Consumers' (1996) 12(4) *Journal of Management Information Systems* 5, 32.

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 Yair Wand and Richard Y Wang, 'Anchoring Data Quality Dimensions in Ontological Foundations' (1996) 39(11) *Communications of the ACM* 86.

30 Department of Immigration and Citizenship (n 18) 4.

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 Dacey) ('Evidence to Senate, 22 May 2018'); *Procedural Instruction* (n 25) 13.

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) 3.

35 Ibid.

36 Ibid.

37 *Procedural Instruction* (n 23) 12.

38 Evidence to Senate, 22 May 2018 (n 33) 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.

41 Australian National Audit Office, *The Integration of the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service* (Report No 45 of 2017–2018, 6 June 2018) 29 ('Integration of DIBP and ACBPS') citing seven audit reports that have identified issues with record keeping, including: Australian National Audit Office, *Individual Management Services Provided to People in Immigration Detention* (Report No 21 2012–13, 11 February 2013); Australian National Audit Office, *Management of the Cape Class Patrol Boat Program* (Report No 13 2014–15, 16 December 2014); Australian National Audit Office, *Verifying Identity in the Citizenship Program* (Report No 47 2014–15, 10 June 2015); Australian National Audit Office, *Managing Compliance with Visa Conditions* (Report No 13 2015–16, 10 June 2015); Australian National Audit Office, *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services* (Report No 16 2016–17, 13 September 2016); Australian National Audit Office, *Offshore Processing Centres in Nauru and Papua New Guinea: Contract Management of Garrison Support and Welfare Services* (Report No 32 2016–17, 17 January 2017); Australian National Audit Office, *The Australian Border Force's Use of Statutory Powers* (Report No 39 2016–17, 27 February 2017). 'Despite two high-profile, unlawful detention cases, which occurred in 2005, Immigration had not developed adequate control mechanisms to reduce the risk of future systemic failures of process.': RAND Corporation, *Assessment of the Consolidation of the Australian Customs and Border Protection Service (ACBPS) with the Department of Immigration and Border Protection (DIBP)* (Document No RR-1713-AUS, 2016) x.

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 improvement. An assessment of the collective review recommendations confirms a consistent theme throughout each; a lack of sustained follow through, which in turn has left the Department's IM in a critically poor 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).

Court of Conscience
Issue 13, 2019

Boats and borders: Australia's response to refugees and asylum seekers