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DISCUSSION



Deter, detain, deport and demonise: should others follow the Australian crimmigration model?

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ABSTRACT

Crimmigration, the intertwining of immigration and criminal law, has become a feature of many legal systems around the world, but its application in Australia is noteworthy due to its ever-increasing harsh, hard-line approach. We argue that the Australian crimmigration model is comprised of three key facets: deterrence (to 'stop the boats'); indefinite and/or offshore detention; and deportation. All are predicated upon the underlying driver of a fourth, often understated but ever-present D, demonisation. With countries like the United Kingdom and Denmark looking to the Australian model to 'solve' increasing their own irregular migration issues, and the second Trump administration ramping up deportation orders, this piece casts light upon the development and escalation of the Australian crimmigration model over the past decade, highlighting its impacts and ultimately questioning if this punitive model really should be followed.

KEYWORDS

Crimmigration; Australian border control; Deterrence; Detention; Deportation; Immigration

Against the backdrop of an increasingly widespread anti-immigrant sentiment globally and a political desire to prevent irregular maritime arrivals, the United Kingdom (UK) formed an agreement with Rwanda for the offshore processing of all asylum seekers who arrive in the UK irregularly, to deter those seeking to cross the English Channel. Under the *Safety of Rwanda (Asylum and Immigration) Act 2024*, only one person was ever relocated – voluntarily – before it was withdrawn in July 2024 (Seddon 2024). Despite the policy turn-around, the hardline stance on matters of border control and irregular migration continues in the UK and is pervasive across many settler-colonial states (Hiemstra 2019). The British plan to 'stop the boats' by offshoring asylum seekers who will 'never make the UK home' was modelled explicitly upon Australia's long-standing strict border control discourse and policy. Whilst scholars highlighted the inappropriateness and inadequacy of applying the Australian crimmigration model to the British system (see Matera, Tubakovic, and Murray 2023), Britain is not alone

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in considering following Australia's model with Denmark having also expressed interest in the wake of the 2015 European Migrant Crisis in an attempt to restore 'control' over their borders from increased irregular arrivals (Glenday 2016). This is unusual, with Australia usually seeking to borrow from European migration models (Askola 2021).

The Australian crimmigration model, particularly since 2001, can be characterised through four Ds: *deterrence* to 'stop the boats'; indefinite onshore and offshore *detention*; and finally, *deportation* for migrants' removal. These are predicated on the phenomenon of *demonisation* (see Figure 1) and othering of non-citizens within the political discourse through the construction of irregular migrants as dangerous, deviant and potential threats to the Australian public and national security (Ibekwe 2021). Governments are not just complicit but active in the demonisation of migrants, generating discourse and policy that is then perpetuated by the media, resulting in the delegitimisation and discrediting of these individuals, and justifying extreme measures to the public (Devetak 2004; Kapoor 2018; Wilkinson 2014). Demonisation has perpetuated over time in Australia, enabling increasingly harsh policies against migrants to be enacted, without much political or public resistance.

Together, the four Ds demonstrate 'crimmigration': the increasingly harsh and interconnected criminal and immigration laws and practices that target non-citizens (Stumpf 2006). Our model of the four Ds to explore crimmigration draws explicitly from analyses of other punitive immigration systems, such as Hiemstra's (2019) *Detain and Deport*, and Kapoor's (2018) *Deport, Deprive, Extradite*. The Australian model is an overt example of all three facets of crimmigration (Stumpf 2006): the expansion and overlap of criminal and immigration laws; the increasing resemblance of immigration law enforcement to criminal law enforcement; and the prosecution of immigration non-compliance involves hallmarks of criminal prosecution. Crimmigration features enable the prevention of asylum seekers gaining entry to Australia by air or sea, as well the ongoing large-scale indefinite detention and deportation of some non-citizens (Billings 2019). By comparison, many other countries often only focus on one pillar of the crimmigration model.

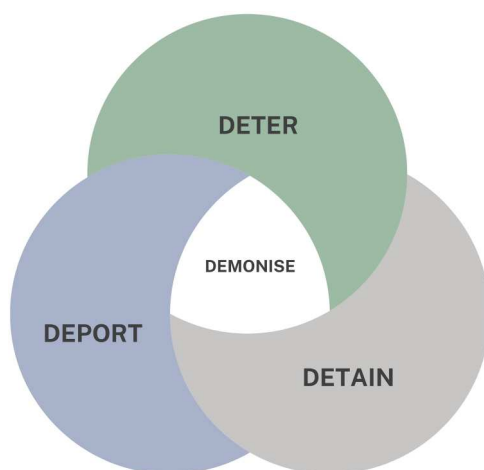


Figure 1. Deter, detain and deport: the Australian crimmigration model, underpinned by the demonisation of non-citizens.

Crimmigration both spurs from, and reinforces, polarising political discourse differentiating migrants within a binary of desirable/undesirable, in particular demonising and framing irregular or criminal migrants as ‘incompatible with Australian society’ (Bolger 2023, 131; Van Berlo 2015; Welch 2012).

Given the recent interest from other states in the Australian crimmigration model, and recent legislative and judicial hurdles that it has faced, we cast light upon the past decade of development and escalation of Australia’s crimmigration model and highlight its challenges. Admittedly, Australia has large migration flows, and did remove overtly racist White Australia Policy restrictions in the 1970s, but its policies remain restrictive within a lens of crimmigration (McNeill and Marmo 2023). Australia’s current (cr)immigration policy is decades in the making, with increasing punitiveness in each iteration; however, the past decade is significant due to constant bipartisan support of extant border control measures; the reinstatement of offshore detention in 2012; and legislative amendments automating (thereby significantly increasing) deportation in 2014 (Abbondanza 2024). All of this occurred within a ‘black box’ – minimal information is disclosed to the public – ensuring the Australian government is able to control the discourse and minimise scrutiny or opposition.

Numerous scholars have provided an in-depth analysis of specific elements of the Australian crimmigration model, comprehensively demonstrated in the edited volume *Crimmigration in Australia* (Billings 2019). While we draw from their analyses, our objective is to understand all these elements together and prompt further research in this vein. Therefore, we provide an overview of each aspect of the model: deterrence, detention, and deportation, and how the model is implemented or challenged – within the underlying demonising rhetoric. We also question the future of this crimmigration model – with the Australian government considering additional legislation to get around mounting legal challenges to the model, what is next? And should other states really follow Australia’s lead?

Deter

Australia’s current border control policy – Operation Sovereign Borders (OSB) – aims to deter and disrupt irregular maritime arrivals. OSB draws upon a previous policy, the Pacific Solution, which was Australia’s first comprehensive approach towards irregular maritime arrivals and attempt to ‘stop the boats’. There are three key elements central to the Pacific Solution which remain in force today through OSB.

The first is the excision of specific Australian territories from the Migration Zone. Through the *Migration Amendment (Excision from Migration Zone) Act 2001*, Christmas Island, Ashmore and Cartier Islands, and Cocos (Keeling) Islands were excised (Subsection 5(1)). This ensured that all irregular maritime arrivals to excised territories would be unable to claim asylum in Australia, and considered unlawful non-citizens.

Subsequently, all irregular maritime arrivals were transferred to either Manus Island (Papua New Guinea) or the Republic of Nauru for offshore detention and processing. This is the second component of the Pacific Solution that continues in OSB which is discussed in the next section: offshore detention.¹

The third element which continues under OSB, is disruption activities conducted at sea, designed to interdict and deter irregular maritime arrivals. Under the Pacific

Solution, Operation Relex tasked the Australian Defence Force, Australian Navy and other government departments with patrolling and conducting interdictions at sea. In the cases of seaworthy boats being detected and stopped, tow-backs to outside of Australia's territorial waters – regardless of asylum claims – were completed (Chia, McAdam, and Purcell 2014; Missbach and Palmer 2020). Patrolling the border with military assets remains a clear component of OSB.

OSB is a military-led approach that considers border protection a 'national emergency' and resulted in the formation of the Australian Border Force. OSB sought to increase deterrence by further criminalising irregular maritime arrivals via their mode of transportation and permitted migrant detention offshore in either Nauru or Manus Island.² The passing of the *Border Force Act 2015* further increased the secrecy of these offshore locations, with gag-laws and restricted access limiting the information available about the operations and conditions within these detention facilities (Section 42). Consequently, information concerning OSB and the practices implemented is mainly restricted to official government channels, which reinforce the narrative of the 'threat' that such individuals pose, in turn garnering further support for the government's political agenda (Malloch and Stanley 2005).

The legislative and political environment which demonised migrants who arrived by boat and permitted the Pacific Solution has also allowed for the more hardline approach of OSB to the issue of irregular maritime arrivals. This escalation in the punitiveness of policies has occurred incrementally, to ensure that such increases would either be generally supported or unnoticed by the Australian public. A spate of irregular maritime arrivals in early 2024 justified further politicisation and demonisation which may affect further renditions of the policy, continuing a bipartisan trend of depicting irregular migrants as 'dangerous deviants' who purportedly pose a threat to the safety and lifestyle of Australians (Abbondanza 2024; Crock and Ghezelbash 2010; Devetak 2004). Against the threat that irregular migrants supposedly pose, when the methods of deterrence fail, such arrivals justified the next step in the Australian crimmigration model: detention.

Detain

Australia's continued use of indefinite detention, and the conditions that individuals are subjected to whilst detained, is undertaken with the purpose and intention of deterring, managing, and deporting unauthorised irregular or criminal non-citizens. Under the *Migration Amendment Act 1992* (Cth) there was a fixed time limit of 273 days for how long an individual could be held in immigration detention; however, this was removed in 1994 and consequently individuals could be held in immigration detention indefinitely. Over the past decade, the length of time that individuals are held in onshore immigration detention facilities has increased almost eightfold, from an average of almost three months in 2013, to over two years in 2023 (DHA 2024; DIC 2013). This increase in average detention length occurred despite the overall number of individuals held in onshore immigration detention in Australia decreasing over the same period, from 12,027 people in June 2013–1,124 people in December 2023 (DHA 2024; DIC 2013).

There are numerous offshore and onshore immigration detention facilities managed by Australia, often in remote locations to hide these facilities from the public (Crock and Ghezelbash 2010). The conditions of many of these facilities, and the treatment of

detainees, are prison-like – a clear demonstration of crimmigration. These similarities include the presence of high razor wire and electric fences around detention facilities, constant surveillance, the practice of handcuffing detainees, body-searches (including strip searches) of detainees, addressing detainees by number rather than by name, and the use of isolation units (Bull *et al.* 2013; UNCHR 2002). In addition to these general conditions, there are a range of other issues commonly associated with immigration detention facilities including racism, poor hygiene resulting from limited access to amenities, substandard food and shelter, and limited access to physical and mental healthcare (Bacon *et al.* 2016). The conditions of offshore detention facilities, such as that of Nauru and Manus Island, are particularly severe (Farrell, Evershed, and Davidson 2016). Overall, the Australian crimmigration model placed an overwhelming emphasis on security and warehousing of these irregular migrants and non-citizens, at the cost of their wellbeing, humanity, and vulnerability – and for 37 individuals, their lives (ANZSOC 2023; Curley and Vandyk 2017).

There are a wide range of physical, mental and social wellbeing issues that detainees experience either due to, or exacerbated by, immigration detention (Baggio *et al.* 2020; Bull *et al.* 2013; Rivas 2022). In particular, there is a positive correlation between the length of immigration detention and the severity of harm and health issues experienced by detainees, which is particularly concerning considering that the average length of detention has skyrocketed over the past decade (Newman, Proctor, and Dudley 2013; Rivas and Bull 2018; Rivas 2022, 2024; Young and Gordon 2016). This harm is particularly evident within the Nauru Files, 2116 reports compiled by service providers that were leaked to Australian media in 2016 (Farrell, Evershed, and Davidson 2016). These reports contained harrowing details pertaining to detainees being victims of assaults, sexual abuse, self-harm, and suicide attempts. Harm also extends beyond the walls of detention, with detainees who have left Australian immigration detention facing social prejudice, discrimination, uncertainty and even disqualifications including some types of government aid (Rivas 2022).

In January 2025, two landmark decisions by the UN Human Rights Committee found Australia's use of these offshore detention facilities had breached two provisions – arbitrary detention, and the ability to challenge detention in court – of the 1966 International Covenant on Civil and Political Rights. In its ruling, the Committee noted that '*a State party cannot escape its human rights responsibility when outsourcing asylum processing to another State*' and asked the Australian government to provide compensation to those affected (UNHRC 2025). In response, Australia deflected responsibility to Nauru, citing that Australia's international obligations did not apply as they '*... do not exercise effective control over regional processing centres*' (Farge and Pal 2025).

Another important Australian High Court ruling in the case of *NZYQ v Minister for Immigration* 2023, found the indefinite detention of individuals who had no prospect of deportation was unlawful. This ruling led to the release of around 140 people from Australian immigration detention into the community, with the potential for a further 200 people to be released (O'Donnell and Rivas 2023). Those released were still subjected to scrutiny and strict security measures, including the use of curfews and electronic monitoring. This was the result of reactionary legislation created by the Australian government due to concerns that some individuals had previously committed serious offences before being moved to immigration detention.

Electronic monitoring is problematic, with some referring to it as ‘digital shackles’ (Solon 2018). For migrants in particular, electronic monitoring to target people potentially absconding or evading authorities in lieu of immigration detention creates challenges and actually further ‘criminalize[s], stigmatize[s] and alienate[s] migrants from the community’ (Silverman 2018). There is still a large cohort who will remain in detention regardless of how this decision is interpreted, and others who will face the next stage of the Australian crimmigration model: deportation.

Deport

In the 2023 NZYQ case, the issue for the government was that some non-citizens who had sought refuge in Australia had subsequently criminally offended – but could not be refoled or deported due to fear of persecution in their country of origin. Australia’s usual approach to dealing with criminal non-citizens is deportation – this final stage of the Australian crimmigration model. The majority of people held in immigration detention facilities in Australia are awaiting deportation based on criminal offending (DHA 2023). Those awaiting deportation in immigration detention – particularly those on offshore islands like Christmas Island – have initiated riots over lack of access to legal representation, communications, and medication. Often without money to engage a lawyer to fight an appeal and facing such conditions in detention which seem ‘worse than prison’, individuals choose to be deported (McNeill 2023, 245); although whether ‘voluntary’ deportation is truly voluntary, is debatable.

Deportation has been a feature of Australia’s migration policy since its federation in 1901, although deportation for criminal offending was first included in the *Australian Migration Act 1958 (Cth)*. Since then, deportation powers have iteratively increased over time, resulting in significantly more deportations – a clear escalation in the Australian crimmigration model (Powell 2020). Deportation on character grounds was introduced in 1999 under section 501.³ In December 2014, (s)501 became paramount through an amendment where visas were automatically cancelled for migrants who had committed crime(s) which had a potential cumulative sentence of 12 months, including retrospectively. This set individuals on a track through the legal system, as once visas were cancelled, individuals were automatically detained awaiting deportation ‘as soon as reasonably practical’ (although can take several years) under s189, 196 and 198. The s501 amendment led to a sixteen-fold increase in visa cancellations and deportations on criminal grounds (BCO 2017).

The minister maintains significant discretion to determine, using arbitrary criteria, whether or not to cancel an individual’s visa. Effectively, decision-makers must ‘engage in a predictive exercise and estimate whether there is a risk a non-citizen would, inter alia, engage in criminal conduct or pose a danger to the community’ – determining risk on both actual and pre-emptive criminal stats (Billings and Hoang 2019, 124). Gang members were particular targets of s501, with people deported for simply being members – not necessarily committing criminal activity. In addition to the arbitrary decisions based on character grounds, it has been found that appeal decisions are also ‘not made consistently and fairly’, and similar cases may be decided differently, demonstrating the arbitrary nature of the entire deportation process (Powell and Wickes 2024, 11).

Those who have been deported under s501 are never allowed to return to Australia; therefore, deportation is the final exclusionary act in Australia's crimmigration model. However, a 2022 Administrative Appeals Tribunal decision to overturn a s501 visa cancellation after the individual had been deported – meaning the individual was allowed to return to Australia under a reinstated visa to see their children – may provide hope for the thousands of people deported since 2014 (Stevens 2022).

Every few years there are efforts to amend s501 further, indicative of bipartisan agreement for the removal of migrants who have committed crimes or are perceived to be criminal through deportation. Following the *NZYQ* saga, the case of *ASF17 v Commonwealth* 2024, an Iranian asylum seeker (who had arrived by boat) who sought refuge for fear of persecution for his sexuality became prominent, as he was detained for ten years and threatened with deportation but refused, following his failed asylum claim (although the High Court later ruled that his detention for refusing deportation was lawful). In response to these cases, the Australian Government hastily created draft legislation to force deportation: the *Migration Amendment (Removals and Other Measures) Bill* (2024). The draft legislation proposed prison time of between 1–5 years for individuals who refuse deportation, and Trump-style travel bans for all travellers from countries which refuse to accept deportations. Adopting this legislation would exacerbate Australia's hard-line approach to crimmigration – one that demonises non-citizens and stops at nothing to achieve border control outcomes in Australia's interests. Indeed, as Dehm and Vogl (2024) argue '[t]o compel those who have been subjected to Australia's punitive system of indefinite detention to participate in their own deportation and criminalise them for not doing so is unjust'.

Where to next for Australia's crimmigration model?

The constant evolution of the Australian crimmigration model over the past decade saw a range of changes, but what remains constant is the ever-increasing demonisation and criminalisation of non-citizens and irregular migrants. In turn, the criminal and immigration branches of the law continue to be further intertwined: exemplifying crimmigration. So long as demonising discourse continues, we will see a further doubling-down by the Australian government (regardless of the party elected) on all three elements of the model. This was evidenced in the bipartisan response to the recent High Court rulings in the *NZYQ* and *ASF17* cases as previously discussed.

Whilst the ruling against indefinite detention may have served a minor blow to the current crimmigration model, it only affected a small number of individuals currently held in immigration detention – with many others still detained indefinitely, including new arrivals. Australia's approach to border control over the past few decades is one of ever-increasing punitiveness and cruelty that shows no signs of changing course. In fact, it can be expected that further legislation will target the deterrence, detention and deportation of irregular migrants until we reach a point where criminal and immigration law will be indistinguishable from each other and further compounding the huge financial, human and ethical costs of the Australian crimmigration model.

While there is a host of literature demonstrating the many global historical precedents enabling demonisation of migrants and exclusionary immigration laws (see Jones 2021; Kapoor 2018; El-Enany 2020; McNeill and Marmo 2023), we have sought to elucidate the

contemporary iterative and escalating punitive approaches taken against migrants in Australia over the past decade. This presents a real-time snapshot of the crimmigration model, demonstrating that without effective political and social opposition to these types of practices, the human rights abuses and wilful ignorance of international conventions will soar. Herein lies an opportunity for other countries that have sought to borrow from the Australian model – like the UK and Denmark – to instead learn *what not to do* from Australia's experience. Border control models focused on further stigmatisation and criminalisation of migrants will only result in the further erosion of both human rights and the trust placed by society in the justice system.

Notes

1. In August 2001, the Norwegian freighter ship the *MV Tampa* rescued 433 asylum seekers attempting to reach Australia by boat. The Australian government refused access, yet due to unrest onboard, the *MV Tampa* entered Australian waters and docked at Christmas Island. Following court proceedings, all asylum seekers were then transported from Christmas Island to Manus Island, Nauru, and New Zealand (Marr and Wilkinson 2003).
2. The Manus Island offshore processing centre was closed in 2017 after the Papua New Guinean Supreme Court found it illegal and unconstitutional. Nauru remains open to this day.
3. Sections 200–201 excluded those who had lived in Australia for more than ten years from deportation. This section was effectively overridden by the introduction of (s)501 (although it remains in legislation). More than 70% of deportations 2014–2020 were of those who would have been exempt under s201 provision (Powell 2020).

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Meg Randolph is a PhD candidate at the School of Social Sciences, Monash University. Her PhD research explores the spread of Australia's offshore detention policies to other states in the Global North—specifically the United Kingdom and Denmark. This exploration has been through the application of the policy transfer framework.

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