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## **HOW ORGANISATIONAL CULTURE WITHIN AUSTRALIA'S DEPARTMENT OF HOME AFFAIRS AFFECTS COMPLIANCE WITH THE REFUGEE CONVENTION-A METHODOLOGICAL CONTRIBUTION TO THE LEGAL RESEARCH TRADITION**

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### **Abstract**

*This paper describes and analyses the suitability of an auto-ethnographic approach as a data collection method for a legal research study. The present study centred on current Australian asylum and refugee decision-making process and the application of procedural fairness (PF) in complying with 1951 Refugee Convention (RC) and the 1967 Protocol by the Department of Home Affairs (DHA). The researcher uses qualitative research methods for this study and developed an approach using his own experience in the industry as a Migration Lawyer for data collection. In the methodology, he will argue the importance, ethical considerations and relevance of this method as a worthwhile research practice to investigate the visa decision-making process of the DHA.*

*The study aims to gain insight into the complexity and realities of the current DHA asylum and refugee decision-making process and the researcher primarily argues that if Australia claims it*

*supports and protects asylum seekers and refugees and respects human rights, Australia should do so consistently with international human rights standards. However, it is pointed out in the literature that the DHA has issues within its organisational culture (OC); these, the researcher suggests, may impact upon its PF and decision-making of the DHA.*

*Use of auto-ethnographic methods are very rare in legal research studies and by using this method the researcher is making a methodological contribution to the body of knowledge of law, as no similar study carried out in socio-legal studies in the past relating to the Australian Migration industry. This paper specifically discusses about various steps of preparation used by the researcher to overcome obstacles and challenges he faced in the use of his own experience by being an 'insider' in researching industry and its implementation in legal research.*

### **Keywords**

Migration Law, Refugee Law, Human Rights Law, International Law

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## **1. Introduction**

This research project involves the Australian Government's Department of Home Affairs (DHA) and how its decisions about visas for asylum seekers and refugees satisfy procedural fairness in the process of complying with the 1951 Refugee Convention and its 1967 Protocol. DHA visa officials have discretion in determining visa applications, and they must be fair and just in exercising the discretion (Department of Home Affairs. (2017). This research will answer the question of whether the DHA is fulfilling its legal responsibilities and exercising its discretionary powers in a balanced way. Existing literature suggests that the DHA has a problematic organisational culture; the researcher's hypothesis is that these factors reduce procedural fairness, particularly when dealing with asylum seeker and refugee applications (McAdam and Chong, 2014; Attorney General Department-NSW, 2010; Foster and Pobjoy, 2011). However, no empirical evidence about these cultural problems and their effects exists, meaning this study will produce novel information about this important social and legal issue.

### **1.1 Problem Identification**

DHA's organisational culture can be measured by finding out what people within the DHA say, do, think or feel. This is a difficult task, however, the researcher, is aware that that previous researchers have attempted to measure organizational culture by using various methods. Among them, Schein, one of the most widely read writers on culture, suggests that culture can be observed on three different levels: tacit assumptions of the group (their widely held, ingrained

subconscious views), espoused values (preferences for outcomes and means of achieving them), day-to-day behavior (Schein, 2004). Martins and Terblanche (2003) suggest that culture can be observed in those aspects of an organisation which culture can influence: mission and vision, external environment, means to achieve objectives, image of the organization, management processes, employee needs and objectives, interpersonal relationships and leadership (Martins and Terblanche 2003).

The researcher in his literature review has identified the DHA's organisational culture as one of the crucial, critical and contributory factors of the decision-making process on refugee/asylum seeker applications and essentially, it shapes and influences internal and external environment of the DHA. The behaviours, beliefs and values of higher DHA officials (Chief Executive Officer and similar officials) are pass through to visa officials via policy and /or advisory directives, communication and interaction from higher officials to the visa officials. In evaluating whether the DHA adhere to PF or not in this process of decision-making should be measured by using appropriate research methods.

## **1.2 Research Objectives and Hypothesis**

The project involves a qualitative study aligned with a constructivist epistemology and an interpretivist perspective. It has **two research objectives**:

1. To examine the Australian Government's Department of Home Affairs' organisational culture and explore how it affects the Department's immigration decision-making processes in complying with respect to compliance with the Refugee Convention.
2. To generate practical recommendations concerning 'protection of Refugee Convention rights' for the benefit of policy-makers and the Department of Home Affairs.

In achieving these objectives, the study centred on a **main research question** and three sub research questions. The main research question is "*How does Organisational Culture within Australia's Department of Home Affairs affect compliance with the Refugee Convention?*". **Sub-research questions** will be:

1. What is the Department of Home Affairs' organisational culture pertaining to its decision-making process?
2. How does its organisational culture influence its adherence to procedural fairness of Department of Home Affairs migration decisions on asylum seekers and refugees?

3. How do Department of Home Affairs decisions relate to, support and/or hinder the implementation of the Refugee Convention?

Based on a preliminary review of the relevant literature, the researcher's **hypothesis** is:

*Australia does not comply with international human rights standards in visa application processes involving asylum seekers and refugees.*

## **2. Methodology**

### **2.1 Auto-Ethnographic Approach**

The researcher will utilize an ethnographic analysis that comes from his own experience for past 7 years in actively participating and handling refugee/asylum seeker related matters within the Australian federal jurisdiction and the Sri Lankan jurisdiction that allows him to focus and evaluate the organisational structure of the DHA and the forms of power that exist in the organization which are the focal point of the research. The researcher is aware that previous researchers have used their own experiences in conducting researches and arrive at significant conclusions (Shamir, (2012; Gray, 2002). Similarly, the researcher also wishes to make use of his experience in this field. During the period of researcher's involvement in the migration law related refugee/asylum seeker cases, it became clear to him that something is going wrong within the organisational culture of the DHA in determining these cases which was not documented and/ or tested empirically.

### **2.2 Sources for Data Collection**

1. For this purpose, the researcher will use his and his colleagues carefully kept notes, instruction sheets, details of performed interviews with clients, and his and his colleague's observations and interpretations about the organisational culture of the DHA.
2. In order to answer the above research question, in addition to 1 above, the researcher will employ in-depth interviews from a non-representative sample of the DHA officers and/or migration agents. There are number of reasons to suggest this approach, particularly, in-depth interviews will provide deeper inside and new perspective on the above question and that will help the researcher to discover individual's attitudes and socio-legal perspectives. The researcher is aware that this method may be subject to criticism of generalizability, however, it allows him to gain access to multi-layered, detailed data that has not been exposed by previous empirical researches in this field. Interview schedule

will be designed to gather data from few angles; first part will include, strongly agree, agree, disagree and strongly disagree questions specifically designed with abstract statements and in the second part, interviewees are required to make a judgement on hypothetical mundane scenarios (vignettes). Abstract statements will be prepared using the knowledge, the researcher gained through his literature review on the topic. This approach will allow the researcher to gain insight into the nature of the trade-off between various attitudes and notions about the proper legal conduct.

### **2.3 Participants and Ethical Considerations**

Participants in the proposed research are DHA visa officials and/or migration agents, the researcher's previous clients and they face three types of minor risks.

1. The auto-ethnographic approach involves evaluating details, documents and decisions about asylum seekers and refugees. If their personal details were revealed, they could face victimisation, harm and disadvantage with respect to their visa applications or other interactions with government or services. To minimise this risk, the researcher will ensure the anonymity of the participants and their data by not disclosing any personal or other identifying information, using pseudonyms to mask participants' identities in all written documents arising from the research, keeping all electronic data in a password-protected database, participants can participate without audio recording, and storing consent forms in a lockable filing cabinet in a secure room at the researcher's office in Melbourne.
2. DHA officials might disclose information to the researcher that they are not lawfully able to share under their governing legislation, therefore exposing them to prosecution. If such a situation arises, the researcher will immediately make the risk known to participant and the information will not be recorded. If the information is already recorded, those will be immediately deleted from the recording.
3. DHA officials who choose to speak with the researcher could face repercussions within the workplace. However, there is no necessity for any other DHA staff, including the First Assistant Secretary, Refugee and Humanitarian Visa Management, to know the identity of the officials interviewed. This is because the researcher will randomly select potential participants from a list provided by the DHA and invite them to participate in confidence. The exact number of visa official are not available to the researcher;

however, as indicated in DHA Annual Report 2017, there are about 2087 employees in the Section of Immigration Affairs of DHA, which is substantially a big number and among them the majority is visa officials and 10 will be selected randomly out of them which make the identification of participants practically impossible. In addition, interviews will be short (approximately 60 minutes) and conducted in agreed private locations separate from the participants' workplaces, and so participant identification by third parties will be highly unlikely. If migration agents are interviewed, they will not face a risk similar to that of DHA officials, as they are independent

#### **2.4 Selection of the Participants**

DHA visa officials are the expected participant group. In case the DHA refuses to grant permission to interview them, then the researcher will interview migration agents instead. Secondary data will include published DHA records, refugee/asylum seeker client's files at the researcher's office and other freely available archival records.

The researcher is a lawyer and he is expecting to use the relevant files kept in his office located at Dandenong, VIC 3175, Melbourne. This action may lead to a breach of professional obligations in relation to use of client information particularly, r9 and r14 of the Australian Solicitors' Conduct Rules (Legal Services Council, 2015). The researcher is aware of these rules and he will obtain permission from relevant clients and only their files will be used for the research and therefore, there is no breach.

The researcher aims to target 10 DHA officials and/or 10 Migration Agents for data collection and 5 refugee/asylum seeker clients. However, the researcher's qualitative approach will permit a lesser or higher number of participants and in any case, qualitative researches can be conducted even with one participant in each group. However, approximately total of 15 potential participants (in all categories) will be approached.

**Table 1: Target Participants**

<b>Method</b>	<b>Participant</b>	<b>Sample size</b>
Auto-ethnography	Researcher's Own Experience	5 case files belong to previous clients of the researcher
Interviews	10 DHA visa officials / Migration Agents	10 individuals

The proposed study is qualitative, emphasising personal experience over larger-scale but shallow quantitative analysis. Therefore, the researcher expects to conduct in-depth interviews with 10 DHA officials and/or migration agents involved in asylum seeker and refugee visa applications and decisions. Ten (10) visa officials from the DHA visa official list or ten (10) migration agents from the Migration Agents Registration Authority (MARA) published list will be selected. The researcher will contact the DHA to obtain permission and a full list of all visa officials. DHA officials and/or migration agents and refugee/asylum seeker clients will be invited to participate by email or telephone.

### **2.5 Potential Benefits Outweigh the Potential Risks**

Potential benefit of this research is that the new knowledge it will produce will be useful to the participants – asylum seekers and refugees, DHA officials and migration agents – directly, and people in these categories in future, because it will enable improved understanding of the cultural and procedural aspects of Australian visa decisions. Furthermore, the findings of this research could be used to improve Australia’s international image pertaining to a critical and highly contentious migration issue. Another potential benefit is that the successful application of the methodology to this field will guide future students, researchers and academics. In addition, this research is likely to have significant value to the wider Australian community, as it will improve its understanding of this important issue. Therefore, the potential benefits outweigh the potential risks.

### **2.6 Participants’ Consent**

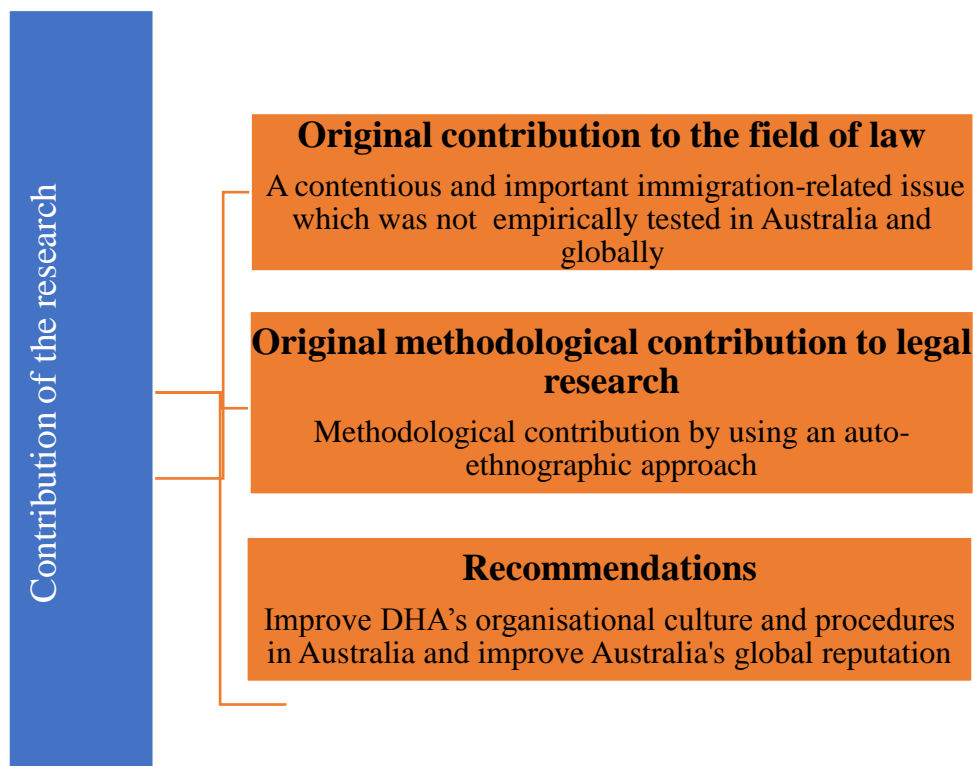
In order to obtain participants’ consent, the researcher will write to the First Assistant Secretary, Refugee and Humanitarian Visa Management section of the DHA requesting permission, and if approved, full list of visa officials from the DHA will be obtained and from it, randomly selected 10 participants will be invited to participate in interviews. Selected participants will be contacted via email or telephone to obtain their consent. If telephone method is used, consent form will be sent by post. If necessary, 10 migration agents will be randomly selected from the list of registered migration agents, and written consent to participate will be obtained from them (or, if some decline to participate, from agents who are subsequently randomly selected and agree to take part). Formal consent will be provided on consent forms

emailed or posted to the researcher, or following verbal or emailed agreement, in hard copy before a face-to-face interview.

Any data gathered from the researcher's legal practice will be attained by writing to relevant clients and obtaining written consent in either emailed or hard copy form (participant information and consent forms will be emailed or posted as required). He will guarantee protection of clients' privacy by maintaining the confidentiality and anonymity of the data. It must also be noted that all categories of participants can withdraw from the research without comment or penalty within the three (3) months from the date of data collection.

### 3. Conclusion

The overall aim of this research is to make an original contribution to knowledge about a contentious and important immigration-related issue in Australia and globally. The findings of this research will be important, as there is currently no empirical evidence available on the topic of the effect of organisational culture on procedural fairness in visa decision-making in Australia or elsewhere. Furthermore, by using a reflective auto-ethnographic approach, the researcher will make a highly original methodological contribution to the body of knowledge in this field.



**Figure 1:** *Contribution of the Research*



The findings will enable conclusions about the DHA's culture and how it affects adherence to procedural fairness and compliance with Refugee Convention requirements in decision-making about asylum seeker and refugee visa applications, and recommendations (if deemed necessary) for improving the DHA's culture and procedures. This research is expected to be carried out with limited time and resources, however, this is an area for future researches to contribute more fully.

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