

# AUSTRALIA'S ASYLUM SEEKER CODE OF BEHAVIOUR

## A statistical analysis

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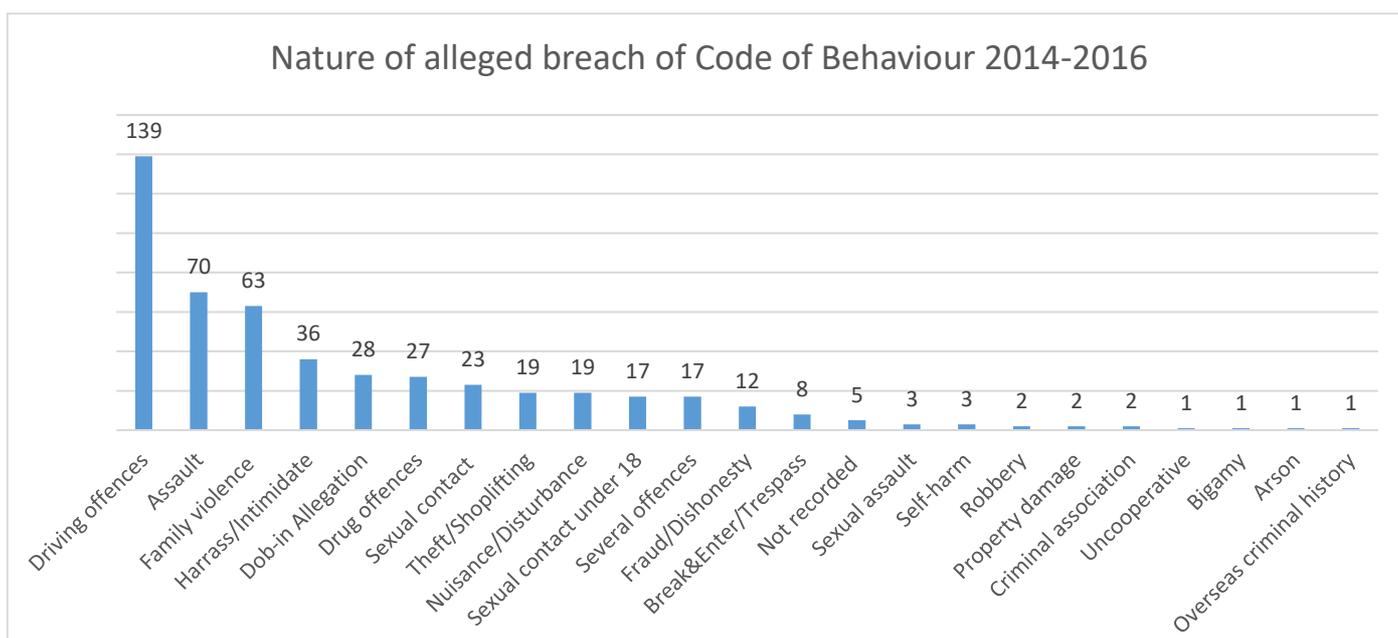


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The Asylum Seeker Code of Behaviour ([Code of Behaviour for Subclass 050 Bridging \(General\) Visa Holders](#)) commenced operation in Australia in December 2013. The Code applies to all so-called unauthorised maritime arrivals ('UMAs') who are not less than 18 years of age and apply for or seek to renew a bridging visa. In order to access a bridging visa, asylum seekers who arrived at an excised Australian territory by boat must sign the code, and are thereafter bound by a 'list of expectations' about how to behave at all times while in Australia. The Code's expectations range from obeying the law, to refraining from spreading rumours, or spitting or swearing in public. Signing and adhering to the Code is a precondition for people designated as a UMA either to be released from detention or to remain in the community. If an asylum seeker is found by the Department of Home Affairs (DHA) to be in breach of the Code, the Department has the discretion to apply one or more of the following sanctions: the asylum seeker may be counselled about Australian behavioural expectations; income support may be reduced or stopped; an existing bridging visa may be cancelled; or an asylum seeker may be detained and transferred to an onshore or offshore detention centre.

The following analysis records the operation and enforcement of various aspects of the Code from 2014-2016. It is based on raw [data](#) relating to 499 allegations released under a Freedom of Information request to the DHA in December 2016.



The above chart shows the allegations made under the Code according to categories set out in the DHA data. Some categories of allegation clearly mirror offences under existing Commonwealth, state and territory criminal laws (eg sexual assault; assault; break & enter). The basis for other allegations is either unclear on the available data (eg sexual contact; dob-in allegation), or the allegation is based on conduct which, although a breach of the Code's 'expectations', may not constitute a recognised criminal offence (eg nuisance/ disturbance; self-harm). By far the largest number of recorded allegations related to driving offences (139/499). The DHA does not, however, break down this category any further in their data so the precise nature of the 'driving offence' is unknown.

| Alleged Breach            | Alleged Breach by Outcome |                                    |                       |           |          |            | Total |
|---------------------------|---------------------------|------------------------------------|-----------------------|-----------|----------|------------|-------|
|                           | Breach of Code            | Cancellation under non-Code powers | Insufficient Evidence | No Breach | Unclear  |            |       |
| Sexual contact <18        | 0                         | 11                                 | 3                     | 1         | 0        | 15         |       |
| Sexual contact            | 3                         | 11                                 | 4                     | 2         | 0        | 20         |       |
| Sexual assault            | 1                         | 1                                  | 0                     | 0         | 0        | 2          |       |
| Family violence           | 27                        | 20                                 | 10                    | 0         | 0        | 57         |       |
| Assault                   | 19                        | 36                                 | 8                     | 1         | 0        | 64         |       |
| Self-harm                 | 2                         | 0                                  | 0                     | 1         | 0        | 3          |       |
| Robbery                   | 0                         | 1                                  | 0                     | 1         | 0        | 2          |       |
| Fraud/dishonesty          | 5                         | 3                                  | 2                     | 0         | 0        | 10         |       |
| Break & Enter/Trespass    | 4                         | 2                                  | 0                     | 0         | 0        | 6          |       |
| Theft/Shoplifting         | 9                         | 2                                  | 2                     | 1         | 1        | 15         |       |
| Drug offences             | 7                         | 13                                 | 1                     | 1         | 0        | 22         |       |
| Harass/intimidate         | 11                        | 7                                  | 10                    | 2         | 0        | 30         |       |
| Property damage           | 1                         | 1                                  | 0                     | 0         | 0        | 2          |       |
| Nuisance/disturbance      | 10                        | 4                                  | 5                     | 0         | 0        | 19         |       |
| Driving offences          | 86                        | 27                                 | 2                     | 2         | 0        | 117        |       |
| Several offences          | 4                         | 12                                 | 1                     | 0         | 0        | 17         |       |
| Dob-in allegation         | 2                         | 0                                  | 15                    | 4         | 0        | 21         |       |
| Criminal Association      | 0                         | 1                                  | 1                     | 0         | 0        | 2          |       |
| Overseas criminal history | 0                         | 0                                  | 0                     | 1         | 0        | 1          |       |
| Bigamy                    | 0                         | 0                                  | 1                     | 0         | 0        | 1          |       |
| <b>TOTAL</b>              | <b>191</b>                | <b>152</b>                         | <b>65</b>             | <b>17</b> | <b>1</b> | <b>426</b> |       |

This table records assessor decisions or outcomes made for each breach category. The assessor is a member of the Department's Code of Behaviour Team. Shortfalls in the totals for the alleged breach types reflect missing information on outcomes in the source data. Where the outcome was recorded, the most common finding was that the Code had been breached (45%) followed by visa cancellation (36%). The visa cancellations listed in the table are recorded as taking place under 'non-Code powers', which seem to relate to the use of s116 of the Migration Act in the context of criminal allegations, however it remains unknown how many involved convictions. For some breach categories (eg assault; sexual contact; drug offences) the most likely outcome for the asylum seeker was to have their bridging visa cancelled. An additional Freedom of Information request was made pertaining to how many UMA bridging visas had been cancelled under the code, it revealed that less than 5 had been cancelled between 1 June 2014 and 30 August 2016 (FOI Internal Review Request FA 18/03/00501-R1).

The dataset also records the sources of allegations made to the Department under the Code. 'SRSS [Status Resolution Support Services] providers' were the highest source for allegations recorded under the Code (68%). SRSS providers are contracted by the Australian Government to provide income and casework support to vulnerable migrants awaiting the outcome of a visa application, including asylum seekers on bridging visas. In each state, different settlement and community organisations are contracted to provide SRSS services. Although any alleged breach of Australian law is a breach under the terms of the Code, police only accounted for 5% of the allegations recorded. A similar number of allegations arose from the Immigration Status Service (ISS) which is a DHA-run service providing information on visa status, of which police are the major users.

| Allegation Outcomes by Source of Allegation |                            |                |                                    |                       |           |         |       |
|---|----------------------------|----------------|------------------------------------|-----------------------|-----------|---------|-------|
| Source of Allegation                        |                            | Breach of Code | Cancellation under non-Code powers | Insufficient Evidence | No Breach | Unclear | Total |
|   | SRSS Provider              | 138            | 84                                 | 32                    | 12        | 0       | 266   |
|   | DHA Dob-in Line            | 4              | 4                                  | 25                    | 4         | 0       | 37    |
|   | Immigration                | 24             | 21                                 | 0                     | 0         | 1       | 46    |
|   | SRSS Incident Reporting    | 10             | 15                                 | 2                     | 0         | 0       | 27    |
|   | Immigration Status Service | 10             | 13                                 | 0                     | 0         | 0       | 23    |
|   | Police                     | 3              | 16                                 | 3                     | 0         | 0       | 22    |
|   | Border Watch               | 0              | 0                                  | 1                     | 1         | 0       | 2     |
|   | Other                      | 3              | 1                                  | 3                     | 1         | 0       | 8     |
| <b>TOTAL</b>                                |                            | 192            | 154                                | 66                    | 18        | 1       | 431   |

This table records assessor decisions or outcomes in relation to allegations of a breach of the Code against the source of the allegation. Minor discrepancies in the column totals compared with the previous table are due to missing data. Where an SRSS Provider was the source of allegation, a large percentage of allegations resulted in either the cancellation of a visa or a finding that the Code itself had been breached (84%). Allegations arising from police or the ISS were upheld at an even higher rate (93%). By contrast, where public reports via the Immigration Dob-in line were the source of the allegation, the likelihood of a proven breach or visa cancellation was much lower (22%).

#### Further Reading

Vogl, A (forthcoming), 'Crimmigration and Refugees: Bridging Visas, Criminal Cancellations and 'Living in the Community' as Punishment and Deterrence', in P Billings (ed) *Crimmigration in Australia*, Springer.

Vogl, A & Methven, E (2015), 'We will decide who comes to this country, and how they behave: A critical reading of the asylum seeker code of behaviour', *Alternative Law Journal*, vol. 40, no. 3, pp. 175-179.

Weber, L and Powell, R (forthcoming), 'Crime, pre-crime and sub-crime: Deportation of "risky non-citizens" on character grounds as "enemy crimmigration"' in J Pratt (ed) *Criminal Justice, Risk and the Revolt against Uncertainty*, Palgrave Macmillan.

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