

**Submission to the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru**

**Purpose:**

The purpose of this submission is to provide background material to the Select Committee in order that it may consider whether or not the signing of the:

“Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues”, on 3rd of August 2013, by:

His Excellency Baron Waqa MP President of Nauru (FOR THE REPUBLIC OF NAURU), and,

The Hon Kevin Rudd MP Prime Minister of Australia (FOR THE COMMONWEALTH OF AUSTRALIA); and,

The subsequent endorsement and promotion by Labor MPs of that signing, and also the implementation of the terms of the Memorandum that followed its signing,

Were consistent with the obligations of members of the Federal Parliamentary Labor Party.

**Background material:**

***The ALP Constitution***

Part A2 of the ALP Constitution refers to the ALP's democratic nature.

Part A6 of the ALP Constitution states that policy "is made by National Conferences".

Part A7 emphasises that policy is not made by directives from the leadership, but by resolutions originating from branches, affiliated unions and individual Party members.

Part B5 (d) (iii) precludes the Federal Parliamentary Labor Party from promoting any attitude which is "contrary to the provisions of the Party Platform".

All ALP parliamentary candidates sign a pledge to do their "utmost to carry out the principles embodied in the Platform".

Taking into account that a need to amend the Party Platform might arise between National Conferences, Part B 6 (l) defines circumstances when the National Executive may put a motion to a postal ballot of delegates credentialled to vote at the last meeting of National Conference.

***The ALP National Platform***

*Given that no ballot in accordance with Part B 6 (l) has been conducted since the most recent National Conference, one may assume that the following paragraphs of the National Platform adopted by that Conference still stand:*

Chap. 9 Para. 157 of the ALP National Platform reads (in part): Labor will ensure that asylum seekers who arrive by irregular means will not be punished for their mode of arrival.

*This sentence leads one to ask why, under Labor in government, those seeking protection who had arrived irregularly were specifically targeted for detention.*

Chap. 9 Para. 160 of the ALP National Platform reads (in part): Protection visa applications made in Australia will be assessed by Australians on Australian territory. Those found to be owed Australia's protection under the Refugee Convention and other international instruments will be given permanent protection under the Migration Act 1958 and will be provided with appropriate settlement support and services.

*These sentences lead one to ask why a Labor government was forcing those arriving in our country, and seeking our protection, to have their applications for protection processed by a foreign state.*

Chap. 9 Para. 168 of the ALP National Platform reads (in part): Children, and where possible their families, will not be detained in an immigration detention centre.

*This sentence leads one to ask why, under Labor in government, the number of children in immigration detention centres within Australia rose from zero to nearly 2000, and furthermore, why the memorandum did not clearly state that no children would be transferred to detention in Nauru at the Regional Processing Centre.*

Chap. 9 Para. 169 of the ALP National Platform reads (in part): Detention in an immigration detention centre is only to be used as a last resort.

*This sentence leads one to ask why, under Labor in government, the number of people in immigration detention centres within Australia exploded, and why the memorandum did not clearly state that no people would be transferred to detention in Nauru at the Regional Processing Centre.*

### **The Memorandum of Understanding (MOU):**

Para. 10 of the MOU states that, “*for the purposes of this MOU*”, the Republic of Nauru “*will host one or more Regional Processing Centres*”.

Para. 11 of the MOU makes reference to “*other arrangements, such as community-based arrangements*”.

The reference in Para. 11 is made without specifying that these arrangements would be “*for the purposes of this MOU*”. Furthermore, the reference in Para. 11 is made utilising the expression “*that the Republic of Nauru ... may also host*” rather than the expression “*that the Republic of Nauru ... will host*”.

In combination, the terminology utilised in Para. 10 and Para. 11 suggests that the intention of the MOU was not to promote a welcoming and supportive environment for those arriving in Nauru, which community-based arrangements might have resulted in. On the contrary, the terminology suggests that the intention was to promote a tough environment.

### **Conclusion:**

The background material presented above strongly suggests that the signing of the MOU, its subsequent endorsement and promotion, and also the implementation of the terms of the MOU that followed its signing, were all inconsistent with the obligations of members of the Federal Parliamentary Labor Party.

It may further be contended that, had Federal Labor MPs fulfilled their obligations, there would have been no need for this Select Committee because no asylum seekers arriving in Australia and seeking our protection would have been sent to Nauru under the terms of such an MOU.

The terminology utilised in Para. 10 and Para. 11 of the MOU suggests that the intention was to promote the imposition of a tough environment upon already vulnerable men, women and children. It is the events consequential of that intention, which have resulted in the need to establish this Select Committee.

**Sincerely,**

**(Dr) Harvey Stern (Life Member, Australian Labor Party)**