

# Labor for Refugees



New South Wales

[www.labor4refugees.com](http://www.labor4refugees.com)

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**March 2016**

**Submission to the Senate Committee Inquiry into the conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea**

**Terms of Reference of this Inquiry**

Noting the sovereignty of the Republic of Nauru and Papua New Guinea, and within the limits of Australia's sovereignty:

- a. conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea;
- b. transparency and accountability mechanisms that apply to the regional processing centres in the Republic of Nauru and Papua New Guinea;
- c. implementation of recommendations of the Moss Review in relation to the regional processing centre in the Republic of Nauru;
- d. the extent to which the Australian-funded regional processing centres in the Republic of Nauru and Papua New Guinea are operating in compliance with Australian and international legal obligations;
- e. the extent to which contracts associated with the operation of offshore processing centres are:
  - i. delivering value for money consistent with the definition contained in the Commonwealth procurement rules,
  - ii. meeting the terms of their contracts, and
  - iii. delivering services which meet Australian standards; and
- f. any other related matter.

The submission deadline is **31 March 2016**. The reporting date is **31 December 2016**

## Introduction

Labor for Refugees made a detailed submission to the original Inquiry in April 2015. This further submission aims to update and supplement the earlier one, particularly covering the period since April 2015.

This submission contains criticism of the Government's policy and its implementation. It also gives attention to some positive and negative aspects of the amended ALP National Platform adopted in Melbourne in July 2015. More detail about Labor's amended policy, and the further changes Labor for Refugees argues for, follows in 5 below.

It is ironic that the conditions and circumstances being considered by this Inquiry exist at the same time as the McClellan Royal Commission into Institutional Responses to Child Abuse, examining the exact same destructive power dynamics, is being held. The Inquiry should note that it has the opportunity to stop this occurring. Future generations will regard our failure to act now in the same way that we are reacting to the failure to act to stop the systemic abuse of children in Ballarat in the past.

With regard to the phrase at 'Noting the sovereignty of the Republic of Nauru and Papua New Guinea, and within the limits of Australia's sovereignty' at the beginning of the Terms of Reference, the question of sovereignty itself is a key issue. It is often claimed that Australia is not responsible for the treatment refugees and asylum seekers receive in regional processing centres (RPCs). It is said by the responsible Minister, and others, that the governments of Nauru and PNG are responsible for the RPCs in their countries. For example, when asked 16 months after the election why no-one had yet been resettled, Minister Dutton said: "That is an issue for the PNG government to comment on. That's not something that I will comment on."<sup>1</sup> And on Lateline on 15 October 2015, he said:

*People who are in the regional processing centres are the responsibility of either the Nauruan Government or the PNG Government.*<sup>2</sup>

This is at the very least inconsistent with Australia's contractual requirement to ensure that the services meet Australian standards (see 4 below).

But the primary consideration is that Australia is paying, and he who pays the piper calls the tune. The High Court of Australia, in its majority judgment on 3 February 2016, would appear to agree. As Madeleine Gleeson, a research associate in the Andrew and Renata Kaldor Centre for International Refugee Law at the University of New South Wales put it:

*The finding that Australia's involvement in Nauru was "indisputable" puts an end to the government's fiction that all these human rights abuses are not its responsibility.*<sup>3</sup>

Certainly Attorney General Senator Brandis was clear in June 2015 when he was answering a question in the Senate about the proposed amendment s198AHA with which the Government clinched its High Court majority judgement:

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<sup>1</sup> <https://www.thesaturdaypaper.com.au/news/politics/2015/01/24/inside-peter-duttons-asylum-seeker-endgame/14220180001417>, accessed 5 February 2016

<sup>2</sup> <http://www.abc.net.au/lateline/content/2015/s4325585.htm>, accessed 6 February 2016

<sup>3</sup> <http://www.theguardian.com/commentisfree/2016/feb/04/the-high-court-despite-the-law-at-its-disposal-has-let-them-get-away-with-it>, accessed 4 February 2016

*The provision is intended to ensure that all aspects of the Commonwealth's actions in relation to regional processing arrangements are captured... The intention of section 198AHA(2)(a) and 198AHA(2)(c), therefore, is to ensure that clear statutory authority is provided to cover the full gamut of the Commonwealth's conduct in connection with regional processing arrangements, and the actions which the regional processing centre countries themselves take in connection with their regional processing functions.*<sup>4</sup>

As Senator Brandis saw it, the amendment to the Australian legislation would legitimise not only Australia's conduct, but that of Nauru and PNG.

One basis for a definitive answer would be to consider that the New Zealand government's offer to permanently resettle 150 people a year from the RPCs has been rejected – by the Australian Government. That clearly demonstrates who is effectively and ultimately in charge of these Centres and responsible for the standards there. It follows that the Australian Government has ultimate responsibility for ensuring appropriate practices in the treatment of refugees in all detention centres and RPCs whether on the mainland or offshore.

In any case, in addition to our legal responsibility as Australians, we, and the Government on our behalf, are morally responsible for the way we treat those who seek our protection as refugees.

## **Terms of Reference**

We would like to submit points for consideration in regard to some of the Terms of Reference.

### **1. Term of Reference a) conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea**

The first Commitment in the Memorandum of Understanding between Australia and Nauru is:

*The Participants will treat Transferees with dignity and respect and in accordance with relevant human rights standards.*<sup>5</sup>

Women on Nauru have reported being required to undress in front of male guards<sup>6</sup>. This is not treating people with dignity and respect. Nor is bullying at school, apparently unchecked by school authorities<sup>7</sup>. In a recent video made by the children on Nauru<sup>8</sup>, they said they were referred to by a number, not by their name. This is not treating people with dignity and respect.

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<sup>4</sup> <https://www.thesaturdaypaper.com.au/news/immigration/2016/02/06/the-lawful-truth-the-high-courts-offshore-detention-decision>, accessed 6 February 2016

<sup>5</sup> <http://dfat.gov.au/geo/nauru/pages/memorandum-of-understanding-between-the-republic-of-nauru-and-the-commonwealth-of-australia-relating-to-the-transfer-to-and.aspx>, Section 17, accessed 4 February 2016

<sup>6</sup> [http://www.huffingtonpost.com.au/2015/12/14/nauru-refugee-strip-search\\_n\\_8808494.html](http://www.huffingtonpost.com.au/2015/12/14/nauru-refugee-strip-search_n_8808494.html), accessed on 4 February 2016

<sup>7</sup> <http://www.theguardian.com/australia-news/2016/jan/21/child-refugees-tell-of-bullying-on-nauru-they-are-rude-to-us-they-punch-us>, accessed 4 February 2016

<sup>8</sup> <https://www.youtube.com/watch?v=1VxA8Oi3fe0&feature=youtu.be>, accessed 4 February 2016

Extensive concerns about the standard of health care on Nauru were raised in our original submission. On Manus Island, one inmate has died as a result of inadequate treatment of his condition. Since then, health professionals in Australia have refused to return people to the RPCs because they have serious concerns about their health and safety there<sup>9</sup>. Particular concern has been expressed for the mental health of those forcibly detained on these prison islands (the 'opening' of the RPC in Nauru may mean that, technically, people are no longer detained: the 21 square kilometre island is in practice a prison.)

The Australian Medical Association in its position statement Health Care of Asylum Seekers and Refugees (revised 23 December 2015) gives further specific content to treating people with dignity and respect:

*Where immigration detention centres continue to be used to detain asylum seekers, Government must provide basic humane standards of living conditions. They must strive to achieve world's best practice in all Australian detention centres, whether located within Australia or offshore. This includes accommodating the health, linguistic, cultural, social, educational, privacy, gender-specific and religious needs of asylum seekers.*<sup>10</sup>

More recently, on 21 February 2016, Professor Brian Owler, President of the AMA, delivered a speech at an Asylum Seeker Health Forum in which he said:

*The fact of the matter is that prolonged detention of children is a State-sanctioned form of child abuse – and we call for it to stop...*

*The AMA is calling for the following:*

*One – a moratorium on asylum seeker children being sent back to detention centres.*

*Two – the immediate release of all children from both offshore and onshore detention centres into the community where they can be properly cared for.*

*Three – the establishment of a transparent, national statutory body of clinical experts, independent of government, with the power to investigate and report to the Parliament on the health and welfare of asylum seekers and refugees.*

*And, four – if the Government or Opposition cannot provide satisfactory health care to people seeking asylum, then their policies should be revisited.*<sup>11</sup>

And on 4 February 2016, the Sydney Morning Herald reported:

*Ninety-five per cent of asylum-seeker children who have lived at Nauru [which is described in the article as a toxic detention environment] are at risk of developing post-traumatic stress disorder, a medical team led by the Australian Human Rights Commission has found, in research that will add to calls for asylum seekers in Australia to be saved from returning to offshore detention.*<sup>12</sup>

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<sup>9</sup> <http://www.theage.com.au/victoria/royal-childrens-hospital-refused-to-discharge-mother-and-child-to-detention-20151011-gk6exf.html>, accessed 4 February 2016

<sup>10</sup> <https://ama.com.au/position-statement/health-care-asylum-seekers-and-refugees-2011-revised-2015>, Section 20, accessed 2 February 2016

<sup>11</sup> <https://ama.com.au/media/ama-speech-prof-owler-ama-asylum-seeker-health-forum>, accessed 7 March 2016

<sup>12</sup> <http://www.smh.com.au/federal-politics/political-news/these-children-are-among-the-most-traumatised-we-have-ever-seen-20160203-gml9dv.html>, accessed 4 February 2016

Doctors have seen drawings by the children and heard about the traumatic scenes of hopelessness and self-harm they have experienced in the RPCs. On Nauru, women have reported sexual assault and feeling unsafe. In so far as we are able to access reliable information (see comments on term of reference (b) below), it seems clear the Government is not providing humane standards of living, but indeed, is deliberately providing substandard care to deter would-be asylum seekers.

Many asylum seekers and refugees, in many cases people who have been severely traumatised by their past experiences, have had to be flown to Australia for medical treatment – a clear indication that no more than basic health care at best can be provided on Nauru. Pregnant women and children are particularly at risk.

In January 2016, 930 academics from Universities across the country including experts on child psychology, human rights, public policy and the law, wrote in a letter to the Prime Minister:

*We are concerned about the serious deleterious effect this [detention] has on the physical and psychological welfare of children, who in effect are being punished in the absence of guilt on their part of any kind and outside the normal legal, child protection and welfare frameworks within which their situation should more properly and appropriately be addressed.*<sup>13</sup>

This impassioned plea elicited just one reply from the Government side, from Senator Abetz attempting to defend the Government's policy. It remains to be seen whether the open letter to Prime Minister Turnbull and Minister Dutton from 61 prominent Australian authors condemning the government's offshore detention policies as "brutal" and "shameful"<sup>14</sup> meets the same fate.

But perhaps most disturbingly, eminent paediatrician Professor David Isaacs recently wrote:

*Long-term immigration detention causes major mental health problems, is illegal in international law and arguably fulfils the recognised definition of torture. It is generally accepted that healthcare professionals should not participate in or condone torture.*<sup>15</sup>

The Secretary of the Department of Immigration and Border Protection recently attempted to defend his department's record against the statements by relevant medical experts with the following defensive non sequitur:

*...any contention that prolonged immigration detention represents "reckless indifference and calculated cruelty," in order to deter future boat arrivals, do not pass even the most basic fact check. The number of children in detention would not be falling if that were the case.*<sup>16</sup>

While attempting to boost the morale of his troops, he confirms his department's responsibility for the state of affairs at the RPCs, but, interestingly, refers to buildings and resources, rather than peacefully settled people (refugees) as evidence (a tactic very familiar to Australians as it has long been in use in Indigenous Affairs).

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<sup>13</sup> <http://www.smh.com.au/national/more-than-930-academics-call-for-children-to-be-released-from-detention-20160120-gm9sl0.html>, accessed 6 February 2016

<sup>14</sup> <http://www.theguardian.com/australia-news/2016/feb/06/asylum-policies-brutal-and-shameful-authors-tell-turnbull-and-dutton>, accessed 7 February 2016

<sup>15</sup> <http://jme.bmj.com/content/early/2015/12/20/medethics-2015-103066.abstract>, accessed 3 February 2016

<sup>16</sup> <http://newsroom.border.gov.au/releases/immigration-detention-and-children-separating-fact-from-fiction>, accessed 11 March 2016

The uncertainty refugees and asylum seekers in the RPCs, or on the remote islands, face is the most bruising and damaging factor. Professor Patrick McGorry, Australian of the Year in 2010, speaking about the effects of mandatory detention on mental health has also talked about ‘the aggravation of initial trauma – second injury’<sup>17</sup>. Many asylum seekers fleeing torture or trauma are subjected to a second injury in the form of apparently indefinite detention in dangerous and unsafe places.

The UN has voiced concerns about air and water pollution on Nauru. There is no reliable source of fresh water on Nauru, so the 10% increase in population represented by the refugees clearly places strain on the island’s resources. Sky News reported on 4 February 2016:

*The United Nations refugee agency has warned Australia must consider the best interests of children following a High Court ruling that could pave the way for asylum seeker families to be returned to Nauru...‘a place that cannot be considered safe nor adequate,’ UN spokesman Benyam Mezmur said.*<sup>18</sup>

The World Report 2015 of the Human Rights Watch contains the damning statements:

*The government’s failure to respect international standards protecting asylum seekers and refugees, however, continues to take a heavy human toll and undermines Australia’s ability to call for stronger human rights protections abroad*

and

*The United Nations Refugee Agency (UNHCR) has criticized Australia’s offshore detention policy as “return-oriented”. The detention centers are overcrowded and dirty. Asylum claims are not processed in a fair, transparent, or expedient manner, with significant cost to detainees’ physical and mental health.*

*According to media reports, gay asylum seekers detained on Manus Island fear persecution and sexual assault. They also fear resettlement in Papua New Guinea, where consensual adult same-sex relations are criminalized.*<sup>19</sup>

The situation on Manus Island appears to be particularly problematic. In June 2015, the Human Rights Law Centre published a paper entitled **The Pacific Non-Solution: Two Years On, Refugees Face Uncertainty, Restrictions on Rights**. In relation to Manus Island, it reads, in part:

*Human Rights Watch and the Human Rights Law Centre uncovered serious human rights concerns including:*

- *Pressure to return to home countries and lengthy delays in refugee processing;*
- *Mental health problems linked to prolonged and indefinite detention;*
- *Arbitrary detention of asylum seekers and refugees in the police lock-up and prison;*
- *Restrictions on refugees’ freedom of movement and work rights;*
- *Assault of a refugee by alleged authorities in Lorengau town; and*
- *Mistreatment of gay asylum seekers by other detainees.*<sup>20</sup>

<sup>17</sup> [https://www.themonthly.com.au/video/2013/03/24/1364103518/patrick-mcgorry-mandatory-detention-and-mental-health?utm\\_medium=email&utm\\_campaign=Today%20-%20Friday%20-%20February%202016&utm\\_content=Today%20-%20Friday%20-%20February%202016+CID\\_955f347cc465c6451449d80119740ff4&utm\\_source=EDM&utm\\_term=a](https://www.themonthly.com.au/video/2013/03/24/1364103518/patrick-mcgorry-mandatory-detention-and-mental-health?utm_medium=email&utm_campaign=Today%20-%20Friday%20-%20February%202016&utm_content=Today%20-%20Friday%20-%20February%202016+CID_955f347cc465c6451449d80119740ff4&utm_source=EDM&utm_term=a), accessed 5 February 2016

<sup>18</sup> <http://www.skynews.com.au/news/top-stories/2016/02/04/un-warns-australia-on-nauru-kids-2.html>, accessed 5 February 2016

<sup>19</sup> <https://www.hrw.org/world-report/2015/country-chapters/australia>, accessed 3 February 2016

<sup>20</sup> <http://hrlc.org.au/the-pacific-non-solution-two-years-on-refugees-face-uncertainty-restrictions-on-rights/>, accessed 3 February 2016

In short, if we ask ourselves whether the conditions and treatment of the people who have asked us for protection are acceptable, we cannot but answer that they are completely unacceptable.

## **2. Term of Reference b) transparency and accountability mechanisms that apply to the regional processing centres in the Republic of Nauru and Papua New Guinea**

The Australian people, bearing legal and moral responsibility for the asylum seekers and refugees on Nauru and Manus Island, are deliberately kept in the dark by the Government about what is happening there. Secrecy surrounds the arrangements that have been entered into, whether it be Government payments to human traffickers, or boat turnbacks. Senator Hanson-Young was spied upon by eight security guards when she visited Nauru in 2013<sup>21</sup>.

Nauru charges \$8,000 for a visa application with no guarantee of a positive outcome. Journalists are unable to visit and report. The one exception to this was the **Australian's** Chris Kenny a public supporter of the Australian Government's policies:

*When asked by Guardian Australia in October 2015 how he obtained a visa to report from Nauru, Kenny said: "If my public support for strong border protection measures helped sway Nauru's decision, so be it."*<sup>22</sup>

In his article entitled *Refugees long to be "Anywhere but Nauru"*<sup>23</sup>, he painted an idyllic picture of smiling, happy, and even entrepreneurial refugees (while portraying some of them as racist). The mental health unit is empty and some of the common areas are air-conditioned. But the refugees did not want to be seen to be happy he said. And yet in fact, whether intentionally or not, his own report detailed considerable distress.

Emails between Australian and Nauruan officials, recently released under FOI, cast some doubt on Kenny's report. For example, in relation to his 'interview' with 'Abyan', who had become pregnant after allegedly being raped in July on Nauru, Kenny's position was that it was clear that 'she was interviewed of her own free will and was treated with respect'<sup>24</sup>, whereas the email exchange reveals that Abyan reported being scared by the reporter and photographer and that she sought protection from the authorities, feeling that she could not remain safely in her home.

The Senate Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru reporting on 31 August 2015 recommended:

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<sup>21</sup> <http://www.news.com.au/finance/work/leaders/new-spying-claims-over-senator-sarah-hansonyoungs-nauru-trip/news-story/d2b4faa127fd0a21b272a1e2471b4e7c>, accessed 6 February 2016

<sup>22</sup> <http://www.theguardian.com/australia-news/2016/mar/09/abyan-reports-being-scared-after-chris-kennys-nauru-visit-immigration-emails-reveal>, accessed 14 March 2016

<sup>23</sup> <http://www.theaustralian.com.au/news/inquirer/refugees-long-to-be-anywhere-but-nauru/news-story/95c727c529918880696ed9a731777c34>, accessed 4 February 2016

<sup>24</sup> <http://www.theguardian.com/australia-news/2016/mar/09/abyan-reports-being-scared-after-chris-kennys-nauru-visit-immigration-emails-reveal>, accessed 14 March 2016

*The committee recommends that Australia increase the transparency of conditions and operations at the Regional Processing Centre, including by ensuring the provision of reasonable access, in negotiation with the Government of Nauru as necessary, by the Australian Human Rights Commission and by the media.*<sup>25</sup>

Save the Children on 31 October 2015 in a media release said:

*The only way to lift the veil is with transparent and independent oversight on Nauru, Manus Island and other detention centres.*<sup>26</sup>

This has not happened; there is virtually no transparency. The President of the Australian Human Rights Commission, Gillian Triggs, has been refused entry to Nauru. In September 2015 the UN's Special Rapporteur on the Human Rights of Migrants, François Crépeau, had to cancel his visit:

*'because the federal government cannot guarantee legal immunity to detention centre workers who discuss asylum seekers and migrants'*<sup>27</sup>

Under the Border Force Act, staff working on these islands face imprisonment if they speak out. Ten Save the Children workers were removed from Nauru after being falsely accused of inciting protests. Although an investigation exonerated them, no apology or restitution has yet been given to them. Contrary to what Kenny might think, there is reason to think that the refugees themselves also fear that speaking out will jeopardise their chances of settlement in Australia.

The situation does really make one wonder what is being hidden.

### **3. Term of Reference d) the extent to which the Australian-funded regional processing centres in the Republic of Nauru and Papua New Guinea are operating in compliance with Australian and international legal obligations;**

The majority decision of the High Court of Australia on 3 February 2016 determined that the RPCs are operating in compliance with Australian law (as amended, with retrospective effect, after the High Court case had commenced).

The appeal to the distinction between law and morality can be misleading. In the terms of the case, the High Court had to determine the legality purely on the basis of what the law, as determined by the Government, states. But law of its nature pertains to the common good of the community to whom it applies. So laws made by governments have a moral dimension.

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<sup>25</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report), section 5.43, accessed 4 February 2016

<sup>26</sup> <https://www.savethechildren.org.au/about-us/media-and-publications/media-releases/media-release-archive/years/2015/in-its-last-act-on-nauru,-save-the-children-calls-for-independent-oversight-across-all-australian-run-processing-centres>, accessed 5 February 2016

<sup>27</sup> <http://www.smh.com.au/federal-politics/political-news/un-postpones-australian-visit-over-failure-to-guarantee-protection-of-detention-centre-whistleblowers-from-recrimination-20150926-gjvqm2.html>, accessed 4 February 2016



Governments make laws, but the laws they make may, on occasions, be morally bad laws, i.e. not in the interests of the community, laws that in fact do harm (such as cruelty or torture or degrading treatment of people in our care).

These considerations are an important part of the grounds on which one can argue that the RPCs are not operating in compliance with our international legal obligations.

On 4 February 2016 in a speech about the alarming impact of detention on children, Human Rights Commissioner, **Gillian Triggs** said:

*Sadly, there's a widening gulf between the constitutional powers of the Australian government and the country's international legal responsibilities. Our national laws in effect allow us to wash our hands of the welfare of refugee children once they leave Australia's shores. Our laws impose no standards on Nauru to meet educational and medical needs of refugees. Indeed, the government's chilling defence to claims that it's in breach of its duty of care is that it has no control over the treatment of refugees transferred to Nauru.*

*Now it seems, it rests with the international community to use its influence to ensure the safety of refugee children under the agreed principles of international law.<sup>28</sup>*

Professor Triggs has also warned that Australia is at serious risk of breaching the Convention on the Rights of the Child, and the Convention against torture and other cruel, inhuman and degrading treatment or punishment.<sup>29</sup>

**4. Term of Reference e) the extent to which contracts associated with the operation of offshore processing centres are:**

- I. delivering value for money consistent with the definition contained in the Commonwealth procurement rules,
- II. meeting the terms of their contracts, and
- III. delivering services which meet Australian standards

The Commonwealth Procurement Rules (CPRs) state:

*Achieving value for money is the core rule of the CPRs.*

*The Australian Government promotes the proper use and management of public resources. Proper means efficient, effective, economical and ethical.<sup>30</sup>*

The cost of offshore detention in 2014-15 reported to the Senate was \$1.2 billion or approximately \$380,000 per annum, per asylum seeker or refugee. The outcome is clearly neither ethical, economical, nor efficient. Furthermore, the services which are being delivered do not meet Australian standards (unless it has become acceptable in Australia to place vulnerable people in situations which may seriously and irrevocably harm them). It is effective only in so far as it deters asylum seekers from leaving Indonesia for Australia: it convinces them

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<sup>28</sup> <https://www.humanrights.gov.au/news/speeches/new-report-reveal-alarming-impact-detention-children>, accessed 5 February 2016

<sup>29</sup> <http://www.smh.com.au/federal-politics/political-news/you-say-you-are-saving-our-lives-but-you-are-killing-us-young-asylum-seekers-plea-to-malcolm-turnbull-20160204-gmligj.html>, video ABC News 24, accessed 6 February 2016

<sup>30</sup> <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/cprs-value-for-money.html>, section 4.4 and 6.1, accessed 5 February 2016

that the situation we would place them in is worse than their current situation. It is difficult to see any value for money, other than political value for money.

The Government argues that there is no other way, but this is patently misleading.

No decent person is advocating drowning asylum seekers and refugees. On the contrary, several considered proposals for allowing people to seek our protection safely, along the lines of the 'humanitarian corridor' recently opened in Europe<sup>31</sup>, have been put forward, involving strengthening our cooperation with Indonesia and supporting the UNHCR there<sup>32</sup>. As Richard Ackland wrote recently:

*The detention of asylum seekers who sought our protection under international law has been a conspicuous failure of policy. Politicians have been unable or unwilling to articulate anything other than a punitive deterrence.... The political issue is spuriously framed around people smugglers and saving lives at sea, when the truth more immediately is about people in desperate circumstances, now being mistreated in the name of the Australian people.*<sup>33</sup>

Julian Burnside QC was equally unequivocal in April 2015:

*Let's be very clear about this: every death at sea is a tragedy. No-one wants to see refugees die in their attempt to escape persecution, but the often-recited concern about refugees drowning is just hypocritical propaganda. People like Abbott and Morrison express their concern about refugees who drown. They are not sincere, but it provides a vaguely respectable excuse for harsh policies. I will say this plainly: when Abbott and Morrison say they are worried about refugees drowning on their way to Australia, they are lying: they are deceiving the public. It opens the way to mistreat asylum seekers who have not drowned, and helps them pursue the darker purpose of keeping refugees out.*<sup>34</sup>

In fact it has been suggested that a stronger, more transparent, and efficient claim processing arrangement in Indonesia, involving the issuing of entry visas by Indonesia, could help to reduce the likelihood of criminals being admitted to both countries.

Thus, the argument that there is no other way is wrong. What our Government is doing could more properly be described in the words of one asylum seeker, a 16-year-old boy: "The Prime Minister of Australia says he is saving our lives, but at the same time he is killing us."<sup>35</sup>

Labor's policy involves not only addressing the problems in source countries (for example, Myanmar), and increasing our support for Indonesia as a transit country, but also increasing our humanitarian intake to 27,000 places per year, with places for people in our region. Further:

*Labor in Government will increase the humanitarian intake of refugees to create an orderly pathway to resettlement in Australia for asylum seekers at risk of people smuggling and provide asylum seekers with an alternative to boat travel to Australia.*<sup>36</sup>

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<sup>31</sup> <http://www.abc.net.au/news/2016-02-05/syrian-child-with-cancer-first-to-use-new-humanitarian-corridor/7142332>, accessed 5 February 2016

<sup>32</sup> See **The Drownings Argument**, ed Robin Rothfield, publ 2014

<sup>33</sup> <http://www.theguardian.com/commentisfree/2016/feb/04/the-high-court-despite-the-law-at-its-disposal-has-let-them-get-away-with-it>, accessed 5 February 2016

<sup>34</sup> <http://www.julianburnside.com.au/the-drowning-excuse/>, accessed 6 February 2016

<sup>35</sup> <http://www.smh.com.au/federal-politics/political-news/you-say-you-are-saving-our-lives-but-you-are-killing-us-young-asylum-seekers-plea-to-malcolm-turnbull-20160204-gmligj.html>, accessed 6 February 2016

<sup>36</sup> [https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP\\_National\\_Platform.pdf?1450417952](https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP_National_Platform.pdf?1450417952), Section 233, p143, accessed 5 February 2016

## 5. Term of Reference f) any other related matter

Some observations about relevant sections of Labor's policy and the policy of Labor for Refugees follow.

Labor for Refugees holds that Labor's National Platform on the issue of refugees is poorly drafted and internally inconsistent. On the one hand it is intended to give 'expression to the values of compassion, fairness and generosity' and states that 'Labor will ensure that asylum seekers who arrive by irregular means will not be punished for their mode of arrival'.<sup>37</sup> But on the other hand, the policy maintains a commitment to mandatory detention and offshore processing, even in the face of its manifest failure. It maintains the fig leaf 'strong border' rhetoric, and the 'architecture of excised offshore places' (Section 241).

With regard to legal obligations, Labor's policy is 'to treat people seeking our protection with dignity and compassion and in accordance with our international obligations, the rule of law and core Australian principles of fairness and humanity. Labor will legislate to enshrine our international obligations into Australian domestic law'.<sup>38</sup>

It follows that Labor in government would have to recognise that its support for s198AHA in June 2015 (which the High Court has made clear in its 3 February 2016 judgement was the basis on which the RPCs could be considered legal) was not consistent with Labor's platform and involves an unfair interference with the case of the litigants then before the High Court. It's un-Australian to change the goalposts during the game. To enshrine our international obligations into Australian domestic law, Labor in government would have to repeal s198AHA.

Further sections from the ALP National Platform state:

*262. Labor believes the Refugee Convention plays a critical role in Australian law. Referring to the Refugee Convention in the Migration Act 1958 is good legislative practice.*

*263. Labor in Government will reintroduce the appropriate references to the Refugee Convention into the Migration Act.*<sup>39</sup>

Labor for Refugees is opposed to detention and in particular to the detention of children, and believes that for the majority of asylum seekers all necessary health and other checks can be carried out within 30 days in a community setting. Labor for Refugees calls for the closure of Manus Island and Nauru and the resettlement of the refugees there in Australia, or another country such as New Zealand, if they wish. Labor for Refugees argues that boat turnbacks are wrong and dangerous, and should be rendered unnecessary by suitable safe pathways being arranged in transit countries.

It is unfair of Australia to exploit Nauru and PNG by offloading its responsibilities onto them. Australia is a comparatively wealthy, well-resourced country. As well as meting out punishment to asylum seekers and refugees, we are also trashing the reputations of these developing nations, cynically exposing the deficiencies of their systems of justice, health and education.

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<sup>37</sup> [https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP\\_National\\_Platform.pdf?1450417952](https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP_National_Platform.pdf?1450417952), p141, p144, accessed 5 February 2016

<sup>38</sup> ALP National Platform, Chapter 9 Section 218  
[https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP\\_National\\_Platform.pdf?1450417952](https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP_National_Platform.pdf?1450417952), pp141-2, accessed 5 February 2016

<sup>39</sup> [https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP\\_National\\_Platform.pdf?1450417952](https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP_National_Platform.pdf?1450417952), p146, accessed 6 February 2016

Finally, Labor for Refugees wholeheartedly endorses Chapter 9, section 220 of the ALP National Platform:

*Labor believes that as a country Australia must not harm people.*<sup>40</sup>

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<sup>40</sup>[https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP\\_National\\_Platform.pdf?1450417952](https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1450417952/ALP_National_Platform.pdf?1450417952), p142, accessed 5 February 2016