

We are academics who have serious concerns about the protection of asylum seekers under the proposed legislation presented to Federal Parliament in the week prior to the winter break. The undersigned represent a substantial proportion of Australia's leading experts in refugee and asylum seeker research. The strength of our concern is indicated by this unusual cross-disciplinary alliance and our wish to express our views.

The two major political parties claim that the most effective solution is to 'stop the boats'. However, stopping boats of asylum seekers reaching Australia (if that is even possible) does nothing to address the reasons why people flee persecution in their own countries. Neither does it address the needs of asylum seekers to find a durable solution elsewhere. We argue, therefore, that none of the solutions proposed by either major political party is in fact a solution.

Reasons for our opposition are outlined below. We would prefer a different approach to this issue with a focus on protection to provide durable solutions for asylum seekers and refugees in the region. **Refugees must have viable alternatives to jumping on boats**; we outline these alternatives at the end of this letter.

Four "solutions" to the "problem" of asylum seekers arriving by boat have been suggested by the two major political parties. All of them fail to address the needs of asylum seekers and undermine Australia's obligation to implement its responsibilities under the UN Refugee Convention in good faith. Furthermore, they are unlikely to be successful.

### **The proposed policies and reasons for our opposition**

- **Returning boats to Indonesia.** Experience with this policy under the Howard government showed how dangerous it was for both asylum seekers and Australian Navy personnel. Many lives were put at risk; for example, according to [a \*Four Corners\* report](#), when SIEV 7 was returned to Indonesian waters in 2001, three men disappeared, presumed drowned, while trying to swim ashore from their stricken boat. There is also the question of incompatibility of the policy with the obligation to rescue those whose lives are imperilled at sea. Furthermore, Indonesia has indicated that it will not accept the towing back of asylum seeker boats to its shores and former Defence Force chief Admiral Chris Barrie has serious reservations about the proposed policy. In short, he does not believe that it will work.
- **Temporary protection visas.** Refugees granted temporary protection visas under the Howard government were precluded from applying for family reunion. Thus, rather than deterring asylum seekers from taking boat journeys to Australia, evidence indicates that these visas encouraged many women and children to do so. For example, most of 353 asylum seekers who died in 2001 when the vessel SIEV X sank en route to Australia were women and children; many of whom had husbands or fathers on temporary protection visas in Australia. Furthermore, those of us who engage with refugees from that era have ample evidence of the mental harms done to individuals because of temporary protection visas; some persisting to the present day.
- **The Pacific Solution.** 1,231 asylum seekers were detained on Nauru under the Howard government; many for a period of years. 484 were eventually resettled in Australia and 274 were resettled in other countries, all either as refugees or on other humanitarian grounds. 473 were returned to their countries of origin, mostly to Afghanistan. Evidence suggests that many of those returned to their country of origin fled soon after they arrived as it was still unsafe for them. Some of these asylum

seekers have since returned to Australia and have now been accepted as refugees. Finally, the evidence is clear that asylum seekers (including many children) are being harmed psychologically, particularly when they spend a long time in offshore facilities.

- **The Malaysian Solution.** Refugees' human rights cannot be adequately protected through this scheme. Malaysia is not a party to the Refugee Convention and does not protect the rights of refugees in practice. For example, refugees have no guarantee that they will not be returned to their countries of origin to face further persecution. If Australia sends asylum seekers to Malaysia without first assessing their refugee claims, it may breach the core prohibitions against *refoulement* in the Refugee Convention and the Convention against Torture. It would also demonstrate a lack of good faith in the implementation of Australia's obligations under the Refugee Convention and other core human rights treaties.

**We propose the following:**

1. Australia should implement its UN Refugee Convention obligations in good faith by processing those asylum seekers who come to Australia and seek protection. We should not shift them to other countries. We cannot encourage other nations to respect the Convention if we blatantly disregard it ourselves. Seeking to move asylum seekers to other countries may achieve short term domestic political gain, but it will undermine Australia's efforts to develop a viable regional framework, as it reinforces regional perceptions that Australia is interested in exporting its refugee 'problem' rather than collaborating in a genuine multilateral process.
2. Australia should immediately increase its yearly humanitarian intake to 25,000 and resettle refugees from both Indonesia and Malaysia. It should consult with UNHCR to make protection available to asylum seekers who would otherwise seek their own solutions. This should include refugees already en route (that is, in Indonesia and Malaysia) as well as UNHCR priority groups in other countries.
3. Applications should be promptly assessed by the UNHCR in Indonesia and Malaysia so that refugees have viable alternatives to jumping on boats. The more people who do not need to jump on boats, the less deaths there will be at sea. The UNHCR needs to be given more funding by Australia to achieve this. Alternatively, Australia could process asylum seekers in Indonesia themselves and then transport the refugees safely to Australia.
4. Australia should bring an end to the mandatory detention policy and – after health and security checks - allow all asylum seekers to live in the community while their refugee claims are processed. This would follow the Labor Government's recent initiative of offering bridging visas and community detention to asylum seekers not considered a risk to the community. Legislation should be adopted to enshrine this policy and to ensure that detention is used as a last resort and is not of indefinite duration.
5. There should be judicial oversight in cases where long-term detention is sought. To give but one example, there are over 50 (primarily Tamil) refugees in indefinite detention who have been found to be refugees but have also been assessed to be

security risks. This is in part because of a lack of judicial oversight; these refugees are not even aware of the allegations made against them.

To conclude, we believe that any policy should preserve rather than compromise the human rights of asylum seekers - including their right to seek asylum. We need humanitarian policy responses that share responsibility rather than shift the burden.

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