



Refugee Council
of Australia

REFUGEE POLICY IN THE 2010 FEDERAL ELECTION CAMPAIGN: WHAT THE PARTIES ARE SAYING

As refugee policy has become a central issue in the 2010 Federal election campaign, the Refugee Council of Australia (RCOA) has produced a summary of the public positions being taken by the Labor Party, the Liberal-National Coalition and the Greens. The aim of this document is not to critique the policies but to give information about the stances the three main parties are taking. RCOA does not endorse any political party but responds to each policy proposal according to its impact on refugees and asylum seekers. We support efforts to expand and strengthen Australia's Refugee and Humanitarian Program and to build international cooperation aimed at enhancing refugee protection, based on human rights principles and the provisions of the Refugee Convention. We oppose efforts to deflect Australia's protection responsibilities to other countries, to weaken the protection provided by Australia to refugees and to limit the scrutiny of Australia's refugee determination processes and its detention of asylum seekers.

AUSTRALIAN LABOR PARTY ¹

1.) CHANGES TO REFUGEE AND ASYLUM SEEKER POLICY SINCE 2007

In government, the Australian Labor Party (ALP) has introduced a number of changes to refugee policy since its election in November 2007. These include:

- the closure of the offshore processing centre in Nauru;
- an end to the Temporary Protection Visa system;
- the introduction of a merit-based appointment process for the Refugee Review Tribunal;
- the abolition of the "45-day rule" bar on asylum seekers' access to work rights and basic health care;
- an increase in the total Refugee and Humanitarian Program from 13,000 places (2007) to 13,750 (current);
- the replacement of the Howard Government's Community Care Pilot with an ongoing program to support asylum seekers living in the community;
- some reforms to immigration detention including the development of "New Directions in Detention", an outline of principles for the conduct of immigration detention centres;
- the abolition of the policy of charging immigration detainees for the cost of their detention;
- the suspension of processing protection applications for people from Sri Lanka and Afghanistan;
- the reopening of the remote Curtin Detention Centre; and
- legislative changes to increase penalties for those convicted on people smuggling and providing material aid.

The policies of mandatory detention and the excision of offshore islands from Australia's migration zone remain in place. Following changes by the Labor Government, asylum seekers affected by

¹ Primary sources: *The Prime Minister's speech to the Lowy Institute (6 July 2010); the Australian Labor Party's National Platform.*

the excision policy now have access to migration review and to an independent review of decisions, with the Immigration Ombudsman having oversight of detention arrangements.

2.) REGIONAL APPROACH TO PROCESSING ASYLUM SEEKERS

On 6 July 2010, Prime Minister Julia Gillard announced that the Labor Government is pursuing a regional approach to the processing of asylum seekers with the involvement of the United Nations High Commission for Refugees (UNHCR), as part of a sustainable regional protection framework. This framework would build on work already underway through the Bali Process. Ms Gillard said Labor would work towards an approach which “effectively eliminates the onshore processing of unauthorised arrivals and ensures that anyone seeking asylum is subject to a consistent process of assessment in the same place”.

If re-elected, Labor would introduce a regional processing centre to reduce the incentive for people smugglers to send boats to Australia. The assessment processes would be consistent to ensure that arriving by boat does not give an advantage in the likelihood that they would end up settling in Australia or other countries of the region. Labor would require that the regional processing centre be properly run, auspiced and structured, with the processing to take place in a country which has ratified the Refugee Convention.

In announcing plans for a regional processing centre and for the development of a regional protection framework, Prime Minister Julia Gillard said the Government’s policy goal is to “wreck the people smuggling trade” by removing the incentive for boats carrying asylum seekers to leave their port of origin in the first place: to remove both the profitability of the trade and the danger of the voyage. The Government’s policy seeks to stop the boats before they leave ports on the journey toward Australia. Ms Gillard does not support the idea of turning asylum boats back to the country from which they have come, saying that such an approach would put asylum seekers and Australia’s defence and customs personnel at risk. She says that Labor does not accept the idea of punishing women and children by locking them up behind razor wire or ignoring people who are fleeing genocide, torture, and persecution. This, she says, is not inconsistent with “our commitment to secure borders and fair, orderly migration”.

3.) SUSPENSION OF THE PROCESSING OF ASYLUM CLAIMS

The suspension of the processing of asylum applications for people from Sri Lanka, which was imposed on 9 April 2010, was lifted on 6 July. The suspension for Afghan asylum seekers remains in place, to be reviewed in October.

4.) INCREASING PENALTIES FOR PEOPLE SMUGGLERS

The Government recently strengthened penalties with the enactment of the *Anti-People Smuggling and Other Measures Act 2010*. This legislation includes mandatory minimum penalties for organisers and created a new offence of providing material support for people smuggling, with a maximum penalty of 10 years’ imprisonment and/or a fine of \$110,000. The Government will legislate to toughen these measures further, increasing maximum penalties for situations where a people smuggling venture results in death.

1.) TURNING BACK BOATS

The Liberal-National Coalition has pledged to turn around boats carrying asylum seekers where it believes this can be achieved safely and practically. Where circumstances permit and vessels can be safely secured, the Coalition will return boats and/or their passengers to their point of departure or an alternative third country destination. This would be done through secure interception of vessels, whether in international waters, Australia's contiguous zone or in Australian waters, consistent with the Migration Act, and by restoring relationships with regional neighbours to enable return of vessels and their passengers in a manner consistent with our international obligations.

In particular, this would require a commitment from the return country not to refoule persons seeking asylum to the place from which they claim to be fleeing persecution.

Also, where a person seeking asylum from their home country has arrived in Australia without a valid visa, and has residency rights in a third country, they will be returned to that country of residency and their asylum claims will not be assessed.

2.) OFFSHORE PROCESSING

Purpose: The Coalition policy includes offshore processing of asylum claims, including third country processing. The Coalition plans to put a centre in one place to deal with asylum seekers entering Australia by boat.³ In doing this, the Coalition says that it would seek "to deal with problems on Australia's side of the fence and put in place measures that will deal with that"⁴.

Operation: The Coalition's preference would be for the facility to be operated by the International Organization for Migration (IOM), with potential support from sponsor countries in the region. Persons detained at this facility would have their refugee status assessed in accordance with UNHCR guidelines. Those whose claims were successful would be eligible for resettlement under the UNHCR's global resettlement program. While it would participate in resettlement, Australia would not take blanket responsibility for all those transferred to this facility.

Legal Status: The Coalition will also seek to clarify the legal status of 'offshore entry persons' under the Migration Act, when transferred to the mainland. At present, the Coalition says, the Migration Act appears to be silent on this matter. In Government, the Coalition introduced protections to quarantine persons transferred from other countries (Nauru and PNG) to Australia for temporary purposes from access to our courts. It is not clear, the Coalition says, that these provisions apply to the transfer of persons from Christmas Island. A Coalition Government would introduce changes to the Migration Act to apply the 'transitory person' provisions to all 'offshore entry persons' detained on Christmas Island, not just those in locations outside Australian territory. Under Coalition policy, transitory persons could be transferred to the Australian mainland temporarily but would have to be returned to their offshore location within six months.

3.) AUSTRALIAN PROCESSING OF PROTECTION CLAIMS

No card, no entry: A Coalition Government would enforce a presumption that, where asylum seekers destroy their identity documents, they will then be denied refugee status. This policy would mean that their refugee status would be rejected and that they would be returned to their country of origin.

Ministerial oversight: A Coalition Government would increase ministerial oversight for the process of approving refugee applications. Under these measures, the Minister would have the opportunity

² Sources: Coalition Border Protection Policy (May 2010); Media Release regarding the Coalition's Border Protection Policy; Transcript of the joint press conference with Tony Abbott MHR, Scott Morrison MHR and Michael Keenan MHR (6 July 2010); Interview with Scott Morrison, Sky News (6 July 2010)

³ Recent comments from Opposition Leader Tony Abbott suggest that Nauru is the Coalition's favoured location.

⁴ Shadow Minister for Immigration and Citizenship, Scott Morrison, quoted in *The Age*, 10 July 2010

to review any recommendation made by a departmental official at any point in the processing of the application and have the option of overturning a decision. The Coalition says its aim would be to ensure that there is “a proper level of oversight and scrutiny on the process”.

4.) TEMPORARY PROTECTION AND MUTUAL OBLIGATION

Reintroduction of Temporary Protection Visas: A Coalition Government would introduce a non-permanent visa for asylum seekers who do not have a valid visa when they lodge their asylum claim. These temporary protection visas (TPVs) would be provided where persons who have successfully sought asylum have arrived without a visa or where persons entered Australia on a valid visa but were in breach of their visa conditions at the time of their application. TPV holders will have no family reunion rights and, if they decide to depart Australia, no right to re-enter the country. Only offshore protection visa applicants and those who have a valid visa at the time of their application will be eligible for a permanent protection visa when seeking asylum.

TPVs would be provided for a period of between six months and three years. Upon expiry of the TPV, further applications would be assessed in what are deemed to be appropriate cases. If, after the term of this visa has expired, it is established that the visa holder still has a well founded fear of persecution in their country of origin and there are no alternative asylum options available to them, they will be eligible to apply for an extension of their temporary protection visa or permanent protection visa. The government would then have the option of awarding either form of visa, regardless of the application. People found not to be in need of ongoing protection would be returned to their countries of origin.

Upon re-introduction of TPVs, a Coalition Government would lift the suspension of assessment of asylum claims by persons from Afghanistan and Sri Lanka. The Coalition says there should be one rule for everyone who seeks to arrive without a visa, regardless of nationality, religion or race.

Mutual obligation for benefits: TPV holders would have work rights and access to Medicare and other benefits as provided under the previous Coalition Government’s TPV regime. Consistent with the previous Coalition policy in Government, should a TPV holder be unable to find work, he or she would be able to access income support through special benefit payments. These payments would be set at the discretion of Government and would not exceed the rate to which youth allowance or Newstart allowance might otherwise be available to these persons.

A Coalition Government would require that access to benefits, in particular income support, would be subject to satisfying mutual obligation requirements to undertake work in return for accessing these benefits. Persons with TPVs of greater than 12 months duration would also have access to settlement services and be required to attend English language classes, skills training courses and job placement and to participate in other mandatory settlement programs to assist with their integration into Australian society and culture, as directed by their relevant settlement case officer. The Minister will be given discretion, by exception, to grant access to additional settlement services or support as required.

Restoration of the 45 day rule: The Coalition will also re-introduce the 45-day rule abolished by the Labor Government. This rule would require applicants to lodge an application for a protection visa within 45 days of arrival if they wished to access work rights and Medicare benefits in Australia. Exemptions could be made through Ministerial intervention in exceptional circumstances.

5.) THE REFUGEE AND HUMANITARIAN PROGRAM

The Refugee Stream: A Coalition Government would increase the number of places available to people who apply for refugee and humanitarian resettlement offshore. Australia's intake from the United Nations High Commissioner for Refugees would be increased from 6000 people each year to 7500, although the overall number of refugees would remain the same at 13,750 per year. The Coalition prefers such applications for protection and humanitarian visas be made offshore through the UNHCR or by persons who are lawfully in Australia.

Pilot Program for Community Sponsorship: A Coalition Government would trial a system where community groups would have the opportunity to sponsor refugees to Australia, provided they bore the full cost. Based on a similar program operating in Canada, community groups or organisations would be able to sponsor humanitarian entrants — if the entrants meet all relevant tests and health, security and identity checks. This program would be in addition to the 13,750 refugee and humanitarian visas currently available each year. The community groups sponsoring would be required to cover all costs, providing a bond deposited in advance in case the community group or organisation is unable to continue the sponsorship. It is expected that approximately 1,250 places may be made available under this program.

THE AUSTRALIAN GREENS⁵

1.) IMMIGRATION DETENTION AND COMMUNITY RECEPTION CENTRES

The Greens would abolish mandatory and indefinite detention of asylum seekers. Asylum seekers who arrive without a valid visa would have their claims for asylum assessed while living in the community. The Christmas Island detention facility would be closed and a portion of the money already earmarked for use on the island – \$973 million over four years – would be used to establish Community Reception Centres in mainland Australian cities. These centres would be publicly owned and managed. Entry and exit to these centres would be unrestricted except where prohibited for medical or security reasons. The Greens also move to would introduce judicial review for detention decisions.

2.) PROCESSING OF PROTECTION CLAIMS

Initial assessment of refugee status: The Greens would ensure that initial assessment of refugee status is completed within 90 days. Asylum claims would be assessed without discrimination based on the method of arrival. Asylum seekers would be fully informed of their rights on arrival and given immediate access to legal assistance. The legal right of asylum seekers to challenge decisions that affect them in the courts would be restored.

Introduction of Asylum Application Visas: Asylum seekers whose applications for refugee status are pending would be granted an Asylum Application Visa (AAV) and would be assisted to move into the community, provided medical and security checks are satisfied or after 14 days has passed, whichever occurs first. AAVs would entitle asylum seekers to travel, work, income support and access to ongoing educational and medical services anywhere within Australia while their claims for asylum are assessed. If refugee status is refused and the person cannot be repatriated, the AAV would remain in force until the person can be repatriated. AAVs would be denied if security checks demonstrate the person poses a serious criminal threat to the Australian community or if the person has not remained housed in the reception centre while the medical and security checks were completed. Those refused an AAV would be housed in separate, appropriate, publicly owned and managed facilities close to urban areas. The decision to refuse an AAV would be reviewable at the Administrative Appeals Tribunal. The number of AAVs given to asylum seekers who arrive without a valid visa would have no impact on the prescribed number of offshore refugee and humanitarian entrants that Australia accepts.

Abolition of excision policy and the 'seven day rule': The policies of excision of offshore islands from Australia's migration zone and the 'seven day rule' legislation (whereby asylum seekers cannot gain a permanent protection visa if they have spent seven days in a third country) would be abolished.

⁵ Source: www.greens.org.au

3.) REFUGEE AND HUMANITARIAN PROGRAM

Annual humanitarian program intake: The Greens would increase Australia's humanitarian intake to 20,000 refugees, with a focus on people already waiting in detention camps in the region.

New humanitarian visa system: The current system of humanitarian visas (granted only by the Immigration Minister after rejection as a refugee) would be replaced with an open, accountable humanitarian visa process incorporating a humanitarian review tribunal.

Family reunion: The Greens would adopt an immigration program that is predominantly based on family reunions and other special humanitarian criteria as defined by international human rights Conventions. They would ensure that no family unit is forcibly separated by the Australian assessment processes. Families of approved asylum seekers would be granted permission to migrate to Australia for family reunions within a reasonable time, in accordance with the UNHCR humanitarian program.

4.) SERVICES FOR REFUGEES ASYLUM SEEKERS

Services for new migrants and refugees would include appropriate English language classes, social security, legal and interpreter services, programs to ease transition to Australia's multicultural society, and post-trauma counselling where needed.

Grants-based support fund: The Greens would introduce a grants-based support fund (of \$8 million over four years) to assist community organisations to provide essential services for refugees and asylum-seekers. Organisations would apply for a grant of up to \$100,000 to assist in the delivery of case management, health care, emergency relief, social support and housing support. The fund would be administered by the Department of Immigration and Citizenship.

5.) REFUGEE CHILDREN AND YOUNG PEOPLE

The Greens would move to end the detention of children in Australia.

They have proposed legislation to establish a Commonwealth Commissioner for children and young people to protect young non-citizens who have arrived in Australia without support.

6.) REGIONAL PROCESSING

The Greens would push for Australia to be a leader in the region by hosting any proposed regional processing centre.

7.) FUNDING OF UNHCR

The Greens would ensure that Australia adequately contributes to the funding of UNHCR.

8.) ENVIRONMENTAL REFUGEES

The Greens would plan for climate change refugees with a particular focus on the Asia-Pacific region. They would ensure that Australia adopts a definition of environmental refugee in its assessment criteria and works in the UN system for inclusion of a definition in the United Nations Refugee Convention.