

Refugee Policy Under The Rudd Government – The First Year

Address to the Refugee Council of Australia AGM forum - Parramatta Town Hall, Monday 17 November 2008

At this year's meeting of the Executive Committee of the United Nations High Commissioner for Refugees the High Commissioner, Antonio Guterres, described Australia as a model asylum country.

I mention this not because this government will be resting on its laurels or because there isn't more to do – the community sector is always quick to remind me that there is – but it demonstrates what a marked change has taken place since this time last year.

It is a measure of just how far we have come in the first year of the Rudd Labor Government – of how much has been achieved in terms of returning humanity and fairness to Australia's refugee policies, and sweeping away past excesses.

Labor was elected on a platform of change. In the area of refugee policy the key themes running through the Labor platform are humanity, fairness, integrity and public confidence.

Labor committed to abolishing the Pacific Solution and this was one of the first things the Rudd Labor Government did on taking office. It was also one of my greatest pleasures in politics. Neither humane nor fair, the Pacific Solution was also ineffective and wasteful.

At massive cost to the Australian taxpayer – I am advised that the Department of Immigration and Citizenship expended \$309.8 million between September 2001 and 29 February 2008 to run the Nauru and Manus Offshore Processing Centres (OPCs) – the Howard government sought to outsource our international protection obligations to less developed countries when we should have been shouldering them ourselves.

When we came to office there were people found to be refugees left rotting on Nauru because of a political decision taken by the former government to keep them there. I must say I was pleased to discover that the department were very keen to bring them to Australia quickly, and we did this in less than two months.

We know now that most of those people were eventually resettled – after enduring needless delay and suffering – and that most of those resettled came to Australia. The Pacific Solution was not about maintaining integrity or public confidence in Australia's arrangements. It was about the cynical politics of punishing refugees for domestic political purposes.

The same can be said about Temporary Protection Visas (TPVs) – they were inhumane, unfair and ineffective. We moved quickly to abolish TPVs on taking government.

The public were told TPVs stopped boats, when in reality the boats continued to come in greater numbers after TPVs were introduced. Not only that, but because people on TPVs did not have access to family reunion, more women and children risked their lives making the perilous voyage to Australia.

Contrary to the image the Howard Government projected, people on TPVs were not able to go home. Almost all were again found to be refugees and granted permanent protection in Australia when their claims were reassessed years later. In the meantime they were separated from their families and had their settlement here deliberately stymied by a policy of providing them with second rate integration assistance.

The 1000 refugees who were still trapped in uncertainty immediately prior to us coming to office can now obtain permanent residence, and have the chance to get on with their lives and contribute to this country.

The length and conditions of detention, of course, were another major focus of criticism of the Howard government's treatment of asylum seekers. The legacy of the Howard government's punitive detention regime is still being felt in the ongoing mental health problems of former detainees, including children, and the mounting compensation claims against the Commonwealth.

Upon coming to government we quickly moved to address the long terms detention cases that the former government had all too often put in the too hard basket.

In March, I announced that I would personally review, in consultation with the Commonwealth Ombudsman, the cases of people who have been in immigration detention for more than two years and the department has been working hard to implement my decisions.

Of those 72 cases in the long term caseload:

- 39 people are now on visa pathways, 32 of whom have already been granted visas, while 7 are progressing with their Public Interest Criteria (PIC) checks. All of these 7 have been moved to lower security accommodation or have been granted bridging visas pending the completion of their PIC checks. That's 39 people who on review were eligible for visas and shouldn't have been in detention
- of the 22 on a removal pathway, 13 have already been removed
- 8 people remain subject to ongoing proceedings impeding the resolution of their status.

Part of the problem of long-term detention was the failure to actually resolve cases. I would note that with our review some of the most difficult and intransigent cases of recent years have now been resolved.

Following the long-term detainee review I asked my department to apply the same principles to review the remaining detention population and that work is almost complete.

I am pleased to report that our change in approach is already bearing fruit.

- As at 7 November 2008, the total number of people in immigration detention was 279, including 44 in community detention.
- This figure compares with 449 people in immigration detention when we came to office in November 2007 and over 1100 people in immigration detention five years ago.

As importantly, I think less than half are asylum seekers. There is more to do in this space but it is improving.

Labor has retained mandatory detention for unauthorised arrivals while health, character and identity checks are undertaken, but my announcements in July heralded a fundamental shift to a values based approach to detention which will see us maintaining strong border security on the one hand, but also treating people fairly and humanely on the other.

The new policy included the announcement of seven key immigration detention values to guide detention policy and detention practices into the future. The values commit us to detention as a last resort; to detention for the shortest practicable period and to the rejection of indefinite or otherwise arbitrary detention.

It's a risk-based approach to the management of immigration clients, but it will not solve all of the complex and protracted issues that delay resolution of immigration status. There will still be people in detention, but we should see fewer people in detention for much shorter periods.

Underpinning the Labor Government's changes is the rejection of the notion that dehumanising and punishing unauthorised arrivals with long-term detention is an effective or civilised policy response. Desperate people are not deterred by the threat of harsh detention – they are often fleeing much worse circumstances.

I think this illustrates a fundamental difference between this government and the last. We firmly believe that we can have strong and effective border security while also treat people seeking our protection with fairness and humanity.

We have maintained the architecture of excised places and offshore processing - and I know this is unpopular in some quarters, but it was an election promise and the Prime Minister believes in implementing election promises - but we have introduced access to legal advice, independent review, oversight by the Immigration Ombudsman and procedural fairness for people who arrive unauthorised at offshore excised places.

We have also rejected the pejorative language of the past. We recognise that tackling people smuggling, rather than vilifying its exploited clients, should be the focus of government policy.

Working with our neighbours and with the UNHCR and the International Organisation for Migration (IOM) so that people do not have to risk their lives in dangerous journeys is the humane and effective approach - attacking those who arrive at our northern borders is cruel and futile.

The role the previous government played in whipping up hysteria around boat arrivals was a shameful part of our history, and the effects of this are still being felt today. Indeed, the arrival of two boats with 26 passengers is enough for the Opposition to be making the spurious claim that we have put people smugglers back in business. A reality check is clearly needed.

According to UNHCR estimates, the number of refugees and migrants crossing the Mediterranean from Africa to Europe in the first 10 months of 2008, is already approaching the total for the whole of last year - and we are not talking about 26 people.

We're talking about:

- 30 000 people arrived by boat in Italy
- 2600 in Malta
- 15 000 in Greece
- 10 700 in Spain and the Canary Islands.

I think these numbers help to put the Australian experience in perspective.

Direct comparisons are of course difficult to make, but on any analysis the available data supports the conclusion that Australia's protection and border security arrangements are working. Our cooperation with our northern neighbours, as well as our support to the UNHCR and the IOM, are ensuring that people who are in need of protection are able to access it.

Australia is taking our fair share of those in need of protection, and I recently agreed to allow 120 subclass 786 visa holders access to permanent residence in the form a resolution of status visa.

These figures I think also point to another reality - however comprehensive the protection and border security arrangements we have in place, we will still see people coming to this country unauthorised, either by boat or by plane. We did under the last government and we will under this one.

What is important is how we respond. This government's response will be calm and measured. I am hopeful, though not optimistic, that the Opposition will eventually realise that they can contribute to erasing the fear created in the past.

I had been hopeful when Malcolm Turnbull was elected Leader of the Opposition that they would take up that position, but their recent calls for a return to the failed and punitive policies of the past show just how backward looking and bereft of ideas they are.

This is not just a political point. It's a reminder that the debate is not over - it is still very much alive. There is a lot of fear and misunderstanding in the community that can easily be whipped up. The sector has a role to play here, in addressing the misunderstanding, easing the fear, and encouraging the Opposition to play a more positive role.

As I said, there is still more to be done. I know there is a lot of interest in detention debts, and we're actively exploring solutions

For refugees these debts have been written off and are not enforced, but they remain on the books and can act as a barrier to people getting on with their lives once they have been granted a visa. This government is acutely aware of the inequities and injustices that flow from the detention debt policy. I have been actively exploring the resolution of that issue.

Some of you would already be aware that the department has recently initiated further consultations in relation to complementary protection and reforming work rights arrangements for asylum seekers.

I believe consultation with the community sector will continue to be a feature of how we work going forward. I think the sector is constructive, enthusiastic and forthright in the consultation process and I would like to see this continue as the government moves ahead with our program of policy reform.

Trying to resolve work rights for asylum seekers is another area in which we are looking to introduce greater fairness and humanity. The impact of the 45 day rule, which denies people the right to work-based on an arbitrary time limit, is a particular concern.

I think that a more principled approach is warranted. Whether a person has remained lawful while in Australia, and whether they have actively and genuinely sought to pursue any protection claims they may have, seem to me more sensible bases for determining whether that person should have the right to work.

I'm also very focussed on encouraging people to engage with the department. Claims cannot be resolved if people fail to do this.

I look forward to receiving feedback from the sector on the consultation model for change developed by the department.

Complementary protection is another area which I think we can progress. There can be few decisions of more fundamental importance than that of whether an individual is owed our protection from persecution or torture.

It follows that the decision-making process should be transparent and subject to merits and judicial review. This ensures that the decisions are fair, that our human rights obligations are met, and that the public can have full confidence in the integrity of the process.

Again, the department has developed a consultation model, and I look forward to receiving feedback from the sector. The decision in the end will be one for cabinet, but I am confident that it will be supported.

Complementary protection is not the only aspect of migration decision-making that the government is examining. I have asked the department to have a holistic look at how protection visa decision-making can be improved, with particular emphasis on improving client service and the quality of decision-making.

Some measures, such as increasing the proportion of clients who are invited to interview, are already under way. Others, such as closer case management, are being actively worked on.

I have already mentioned the importance of consultation with the community sector, and the department will be establishing an Onshore Protection Consultative Group to have input into these reforms. The Refugee Council of Australia will of course be invited to participate.

With the worst excesses of Howard era refugee policy behind us, Australia has been able to return as a credible international actor in the field of refugee protection. Australia was this year elected Vice-Chair of the UNHCR Executive Committee – recognition that we're seen as good international citizens, and engaged.

One of Australia's key contributions to the system of international protection is our offshore humanitarian program. In the last budget this government increased the size of our humanitarian program by 500 places, and a further 250 places will be available from this financial year.

The Rudd Labor government is deeply committed to the humanitarian program, and it is our ambition to continue to grow the program over time. I would also note that the Prime Minister has a personal interest and commitment in this area.

Protracted refugee situations are a significant challenge facing the international community. According to UNHCR, some 5.2 million of the world's refugees have been living in exile for more than five years. This is clearly unacceptable, and as a government we are committed to doing something about it.

In particular, we are committed to working with UNHCR's Asia and the Pacific bureau in efforts to find durable solutions for the protracted situations of the Burmese refugees in Thailand and Bangladesh, as well as the Bhutanese refugees in Nepal. In the last 12 months more than 10 000 refugees from Burma have left Thailand, many of them bound for Australia, under the auspices of the world's largest current resettlement effort.

Australia has also been instrumental in unlocking a solution to the situation of some 107 000 refugees from Bhutan, who have been living in camps in eastern Nepal, some of them for as long as 17 years. The government recently committed, and I think this is the first time I have noted this publicly, to offering 5000 Bhutanese refugees a fresh start in Australia over the next 5 years. The first of the Bhutanese have already arrived, and by all accounts are settling well.

In Bangladesh, around 27 000 Rohingya refugees from Myanmar's Northern Rakhine State have been living in refugee camps in the Cox's Bazaar District for over 16 years. The conditions there have been described by some humanitarian agencies as the worst they have ever seen.

The government has committed to resettling 100 of these refugees in the coming year, as part of a broader international effort to resolve their situation. Australia has also contributed \$950 000 to UNHCR in Bangladesh to construct 180 new shelters. These will house 1000 Rohingya families, and help improve their basic living conditions until a more permanent solution to their situation is found.

This was part of a broader contribution to assisting people forcibly displaced, made through the government's Displaced Persons and Refugee Fund. That fund was increased to over \$16 million to the in 2008-09 budget, including a special fund for one year of \$10 million for projects specifically designed to assist Iraqis displaced from their country.

Much is already being done, but as a government we believe we can do more. As we seek to remove the stain from Australia's international reputation and re-engage with the United Nations, including UNHCR, we need to do everything we can to maximise the impact of our contribution to the international system of refugee protection. To this end, we are having a comprehensive look at the fundamentals of our humanitarian program.

Multi-year planning for the humanitarian program is one reform that I am particularly interested in. I think we can do better than running an ongoing program year to year – we need a more strategic focus to planning. Bringing Australia into line with this international best practice would enable us to play a more active and effective role in working with UNHCR and the international community to find solutions over time to protracted situations. It would also allow us greater flexibility to respond to emerging international developments as they arise.

The link between the onshore and offshore aspects of Australia's humanitarian program is another issue that I know the sector is interested in us exploring.

There are good policy grounds for this, but it is expensive I don't want to build expectations in the current economic environment. Australia now provides generous settlement assistance to all people found to be owed Australia's protection. This comes at a cost, and so would any effective increase in the number of people we accept overall under our humanitarian program.

In tough times the case for our humanitarian program gets tougher. We need to make the economic as well as the humanitarian case for an increase in numbers. Part of the economic case is that our migration program, considered as a whole, has a positive net impact on the economy. Even considering the humanitarian program on its own, there is after time a positive economic contribution.

What we need is a more comprehensive understanding of the contributions that Humanitarian entrants make to Australia. At the moment they are too often seen only as a cost. The department has already commenced some initial work on this front. A next step would be some longer term research into the economic, social and civic contributions of humanitarian entrants, and I will be looking to move on that once the department's initial work is complete.

Having moved quickly to end the worst excesses of the Howard era refugee policies, the Rudd Labor Government will continue to pursue our agenda for reform, some of which I have touched upon today. Moving forward, we will also continue to consult closely with the community sector, and we see the Refugee Council as one of our key stakeholders.

A lot has been achieved in a short time. I'm very proud of what we've done - but it needed to be done and done quickly. Generally I think the changes have been well received in the Australian community. By way of example, the detention reforms I announced in July were generally well received and an effective consensus emerged that what had occurred before had brought shame on our country, and that changes to the detention policy were well overdue.

The objective of the Rudd Labor Government's refugee policies will continue to be to bring humanity, fairness, integrity and public confidence to an area of public policy in which they were sadly lacking under the previous government. Having restored our international credibility, we will play a constructive and active role in addressing international protection needs, in particular those of people who have suffered for years in the world's refugee camps.

When I spoke on World Refugee Day in June of this year, I said that Australians have a lot to be proud of in terms of our assistance and support to refugees. I believe I can say that with even greater conviction a year into the Rudd Labor Government - but we must continue to build community support for the changes needed to take forward our nation's commitment to refugee protection. The reaction of the Opposition to the two recent boat arrivals demonstrates that the policy arguments are not yet won.