



NATIONAL CO-ORDINATING COMMITTEE

Co-Convenors: Robin Rothfield E: robinro2@bigpond.com M: 0429 929 778

Shane Prince E: prince@statechambers.net M: 0416 229 338

Secretary: Nizza Siano E: nizamax@gmail.com M: 0404 532 249

SUBMISSION TO THE ALP NATIONAL POLICY FORUM ON CHAPTER 9 MIGRATION AND REFUGEES

Labor for Refugees is a non-factional organization, made up of party members and trade unionists who have committed themselves to updating and improving Labor Party Policy on refugees and asylum seekers.

Our aim is to achieve an ALP National Platform that upholds Labor Party values.

Labor for Refugees' goals are:

1. All people seeking protection to be treated with compassion, justice and in accordance with Australia's international obligations. To this end there will be a Royal Commission into the abuses of men, women and children under the Abbott/Turnbull Government, using taxpayer money.
2. Recognition of the right of all people seeking protection from Australia to have their claims assessed on Australian soil, under the Australian legal system.
3. People seeking protection to be accommodated in government run and urban-based reception centres and will not be deprived of their freedom. When a formal application for refugee status has been made and security, health and identity checks are complete, people seeking protection will move from reception centres and to stay in supportive communities. Deprivation of liberty will only occur if there is a risk to the community which is demonstrated to an independent body.
4. Claims for protection to be decided within 12 months of arrival and there will be a right of judicial appeal.
5. People in danger, who are seeking protection, and whose situation is not covered by the United Nations Refugee Convention to be treated with compassion and given protection if appropriate.

To achieve these goals, we propose the existing ALP National Platform 2015 be amended as attached.

Robin Rothfield and Shane Prince
National Co-Convenors

Migration and Refugees

- 217 Labor believes in dealing with the complex issue of those seeking Australia's protection by giving expression to the values of compassion, fairness and generosity. These are values which are at the heart of the Australian identity.
- 217A **Labor will strive to achieve a political dialogue in Australia which is free from vilification of refugees, people seeking asylum and migrants and restores Australia's reputation as a humane, open and accepting community, supportive of multiculturalism and compassion.**
- 218 Labor will 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.
- 219 Labor recognises that, under the Refugee Convention, **people seeking asylum** have the right to seek protection and asylum and that, regardless of the mode of arrival, this is not illegal under Australian or international law. Accordingly, Labor rejects the practice of referring to asylum seekers as 'illegals'.
- 220 Labor believes that as a country Australia must not harm people.
- 221 The issue of those seeking protection is both a global and regional one. Accordingly, in order to achieve a long-term resolution to the issue, it must be dealt with through international cooperation and not unilateral action. Within our region, Australia must play a leadership role.
- 222 A fundamental principle in treating those seeking protection with humanity is to provide as much certainty as possible. An aspiration of certainty in all matters around asylum seekers, including the duration of assessing refugees' claims, must underpin Australian policy.
- 223 Labor will work to ensure that those in detention facilities are treated with dignity and respect and have access to an appropriate standard of care and substantive access to health and education services while held in immigration detention centres (IDCs).

International Engagement

- 224 The world is experiencing its greatest humanitarian need since the Second World War with the largest number of displaced persons since that time. Labor believes that Australia should lead debate on the establishment of a best practice framework, including new regional agreements and understandings required to ensure that the Refugee Convention and the international protection system function effectively in this environment. That includes encouraging countries in our region to provide protection to those in need.
- 225 Labor is committed to the role of the Office of the United Nations High Commissioner for Refugees (UNHCR) as the international agency dealing with the world's response to this humanitarian need. In pursuing Australia's responsibilities as a civilised and modern nation Labor in Government will ensure that Australia is one of the leading contributors to the global work of the UNHCR.
- 226 In South East Asia Australia has a particular responsibility to show humanitarian and protection leadership. Accordingly Labor is committed to playing a leading role in working with South East Asian nations in the region to build a regional framework to improve the lives of asylum seekers.

Labor recognises that Australia has a particular responsibility to provide refuge to people seeking asylum from countries such as Iraq and Afghanistan where our Defence Forces have been engaged in conflicts.

- 227 To combat people smuggling Labor will engage with Australia's neighbours to seek innovative, effective and lawful solutions to the irregular movement of people through the region. This approach will include multilateral engagement, particularly through Australia being a co-chair of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process), and new and deeper bilateral arrangements of a type envisaged by the Regional Cooperation Framework agreed at the Bali Process Ministerial Conference in March 2011.
- 228 Labor in Government will seek to ensure that appropriate multilateral infrastructure is also in place to build a humanitarian regional framework which may include seeking to extend the work of existing multilateral processes.
- 229 Labor will work with the UNHCR to help build its capacity in South East Asia to pursue its mandate and assist the region's asylum seekers **recognising that acceleration of the processing of claims from people seeking asylum in transit countries will stop the need for people to take a boat journey.**
- 230 The phenomenon of people smuggling has a long history arising from the need for people to escape from danger and persecution. Labor also recognises that those who decide to leave a country in perilous circumstances have the right under the Refugee Convention to determine their means of departure. However, recognising the risk to life of people travelling on unsafe, unseaworthy and overcrowded boats often operated by criminal syndicates, Labor supports measures to reduce such journeys by working with regional neighbours and the UNHCR to eliminate any influence that people smugglers may have over vulnerable protection claimants by addressing people smuggling at its source, in countries of first asylum and transit countries.
- 231 Labor in Government **will call on Myanmar** to build human rights for all those living in Myanmar. This would include assisting Myanmar **to** provide opportunities for all communities to participate in society, especially those in the poorest regions. **Labor condemns any mistreatment of ethnic minorities in Myanmar.**
- 232 In pursuing strong regional arrangements Labor will seek to ensure they provide access to protection in countries of first asylum and transit countries to deter secondary movements of asylum seekers through;
- The developing of capacity to improve accommodation, work rights, access to health and education services and other living standards for asylum seekers;
 - Expediting the claims for refugee status by asylum seekers; and
 - The seeking of durable solutions.
- 233 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.
- 234 Noting that Pacific Island nations have a particular vulnerability to the effects of climate change, and that these nations have expressed a clear desire for Pacific peoples to continue to live in their own countries where possible, and acknowledging Australia's unique responsibilities in the Pacific, Labor will:
- Support Pacific Islanders to remain in their homelands as the first response to this challenge;

- Work to assist with intra-country relocations when citizens have to be moved from low-lying areas to higher ground; and
- In the event that in the longer term permanent migration becomes necessary for some Pacific Islanders, work in close consultation with the region to ensure that appropriate settlement is achieved.

235 Labor will continue Australia’s contribution to international aid efforts to reduce the risk of displacement and to alleviate the pressing humanitarian needs of displaced persons

Humanitarian Migration Programme

236. Labor aspires to progressively increase Australia’s humanitarian intake to **50,000** places per year.
- 237 In continuing Australia’s generous humanitarian program, Labor will provide appropriate support for the travel and resettlement of refugees and others requiring Australia’s protection.

Australia’s Border

- 238 For the Australian people to have confidence and trust in the integrity of our migration system, Labor will fund and maintain robust border security measures that support the orderly processing of migration to our country and protect our national interest and our national borders.
- 239 Labor will ensure that asylum seekers who arrive by irregular means will not be punished for their mode of arrival.
- 240 Labor is united in its commitment to prevent further loss of life at sea of vulnerable children, women and men. Labor will:
- Meet its obligations to the maritime principle of safety of life at sea which requires a response to assist in the rescue at sea of vessels in distress **and legislate a duty of care on the Commonwealth to do so.**
 - Consider introducing further penalties for serious people smuggling offences; and
 - Ensure repatriation of crew members who are proven to be juveniles.
 - **Cease the practice of turning boats back at sea.ⁱ**
- 241 **Labor will provide protection to refugees who are currently residing on Manus Island and Nauru and bring them to Australia in keeping with our obligations under the Refugee Convention. This measure will provide savings of at least \$1 billion per year to be spent on other priorities.**
- 242 Labor will take advice from the UNHCR in relation to any arrangements with third countries to ensure that resources and commitments provide appropriate settlement support services to refugees, including health and welfare services.
- 243 Labor is committed to ensuring there is a strong, independent voice within government to advocate for the rights, interests and well-being of children seeking asylum within the immigration system, including those in immigration detention. Labor will appoint an officer independent of the Department of Immigration and Border Protection, backed by the administrative resources and statutory powers necessary to pursue the best interests of those children, including the power to bring court proceedings on a child’s behalf. This will be done without reducing the Minister’s

obligations in relation to unaccompanied non-citizen children.

243A Labor will appoint a Royal Commission to inquire into mistreatment of all detainees in the immigration detention network funded by Commonwealth money.

244 Labor will not pay people smugglers to engage in any form of people smuggling.

Immigration Detention

245 Under Labor's policies, the presumption will be that unauthorised arrivals who enter for the purpose of seeking asylum will, after appropriate checks, be detained only if the need is established.

245A Labor will repeal the statutory obligation to detain non-citizens without visas while their immigration status is resolved.

246 Labor believes that community-based processing is the most reasonable, humane and cost effective approach for supporting asylum seekers while their claim for protection is assessed.

247 Labor's humane and risk-based immigration detention policies and practices will be guided by key immigration detention principles, namely:

- Unlawful non-citizens who present proven unacceptable risks to the community **will be subject to detention. Detention will only be permitted if a risk to the community is established before a magistrate;**
- Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, will be subject to regular review.
- Detention in an IDC is only to be used as a last resort and for the shortest practicable time. **Labor will ensure that detention is for no longer than 30 days;**
- People in detention will be treated fairly and reasonably within the law;
- People in detention will be provided an appropriate standard of care including the provision of health, mental health and education services; and
- Conditions of detention will ensure the inherent dignity of the human person.

248 Labor supports the UN Convention on the Rights of the Child. Accordingly Labor's humane and risk-based immigration detention policies and practices will include a commitment to ensure that after the necessary health, identity and security checks every humanly practical effort will be taken to remove children and their families from immigration detention centres (IDCs) into alternative suitable arrangements.

249 Labor will not detain, process or resettle lesbian, gay, bisexual, transgender or intersex refugees or asylum seekers in countries which have criminal laws against any of these communities as it makes these places unsafe environments for all of them.

250 Labor will ensure that all Australian Government involvement in detention facilities it operates or funds is subject to transparent, independent oversight. Provisions for this oversight will be reflected in all contracts with service providers. Labor in government will use its best endeavours to provide for this oversight in any relevant international agreements. **Accordingly Labor will ensure**

that Comcare fulfils its regulatory obligations to investigate all serious matters in all Australian funded immigration detention centres. Labor will abolish restrictions on doctors or other professionals accessing those in detention and reporting matters of concern in accordance with their professional obligations. Detainees will have the right to contact people outside the detention centre by phone, internet and other reasonable means.

- 251 Recognising the inequities of the policy of charging immigration detainees a daily maintenance rate while in immigration detention, Labor extinguished such detention debts and will oppose any attempts to reinstate this practice.
- 252 As soon as the reasons for detention have ceased, every effort must be made to remove asylum seekers from IDCs through community detention or the granting of bridging visas with work rights. Means-tested access to migration assistance, along with access to appropriate social services **including Medicare**, will be provided while the merits of an asylum seeker's application are assessed.
- 253 The provision of services at IDCs will remain with private sector contractors for the term of the current contracts. In evaluating the future form of detention facility service provision the views of all stakeholders, including the relevant trade unions must be taken into account.
- 254 Labor will legislate to impose mandatory reporting of child abuse in all offshore and onshore immigration detention facilities. **Labor will use Commonwealth power to ensure that all children seeking asylum are monitored and protected by relevant child protection authorities in each relevant State to the same standard as applies under current Victorian legislation.**

Refugee Assessment

- 255 Labor believes protection claims made in Australia should be assessed and reviewed on the individual merits with procedural fairness ensuring that our international human rights obligations are met. Accordingly:
- The assessment and review of protection claims will be underpinned by robust, efficient and transparent processes that ensure fair and consistent outcomes, including access to review and independent advice;
 - The assessment and review of protection claims must be independent and free from any political or diplomatic interference;
 - The processing of protection claims must be streamlined to enhance the quality of decision-making, to provide more efficient pathways for prompt resolution of visa status and to alleviate the courts' immigration case-load burden; and
 - **The assessment will be undertaken in the first instance by officers of DFAT as a treaty administration issue; and merit reviews will be conducted by a body comprised of a judge or magistrate holding tenured appointment who is truly independent and will be required to accord procedural fairness to applicants.**
 - **Labor will undertake a comprehensive Review of refugee decisions by the AAT with a view to establishing a process that will afford applicants procedural fairness free of political bias or interference.**
 - The Stone Review processⁱⁱ will be maintained as an important mechanism for ensuring the fairness of Australia's security assessment system and **should provide efficient and timely pathways for resolution of visa issues for those subject to adverse security assessment.**

- 256 Labor will require the National Security Legislation Monitor to advise on establishing other mechanisms for:
- Independent review of the adverse security assessments that ensures procedural fairness while recognising that processes may be required to protect intelligence sources and methodology; and
 - The management of those whose adverse assessment is upheld.
- 257 Labor will explore options other than indefinite detention, including third country resettlement, to deal with refugees with adverse security assessments in a way that does not jeopardise Australia's national security interests.
- 258 Reporting on the '90 day rule', which requires that refugee status determinations are concluded within 90 days from the time of application, has been an important accountability measure in ensuring that the Government operates in a timely way in assessing protection applications.
- 259 Labor in Government will reintroduce the 90 day rule into the Migration Act.
- 260 The existing fast track assessment process under the auspices of the Immigration Assessment Authority and the limitation of appeal rights does not provide a fair, thorough and robust assessment process for persons seeking asylum.
- 261 Labor in Government will abolish this fast track assessment process. **Those who have had claims rejected through the fast track assessment process will be provided with access to review and independent advice as described in clause 255.**
- 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 **restore all** references to the Refugee Convention into the Migration Act **that were removed by the Coalition Government.**
- 264 Protection **claims** made in Australia **will** be assessed by Australians on Australian territory.
- 265 Under legislation passed by Labor, complementary protection claims should be considered by way of the [protection visa framework](#).
- 266 Labor will ensure that asylum seekers have access to appropriate, independent, government-funded legal advice while working through their claims for protection.
- 267 In assessing asylum claims where the fear of persecution arises from a person's LGBTI status, the fact that the country the person is fleeing has criminal penalties for engaging in consensual homosexual sex is sufficient of itself to establish that fear of persecution is well-founded, and any assessment of the asylum seeker's identity and fear must take account of the very different manifestations of LGBTI identity that other cultures, especially ones profoundly hostile to LGBTI people, necessarily engender.
- 268 Labor will ensure that asylum seekers who self-identify as LGBTI will be assessed by officers who have expertise and empathy with anti-discrimination principles and human rights law.

Australia's Protection

- 269 Those found to be owed Australia's protection under the Refugee Convention, Complimentary Protection or and other international instruments will be given permanent protection under the Migration Act **noting that this includes family reunion.**
- 270 Those not found to be owed Australia's protection under the Refugee Convention, Complimentary Protection or and other international instruments will be promptly returned only after any relevant legal avenues have been exhausted.
- 271 Labor supports the existing definition of 'serious harm' and 'persecution' including the current risk threshold of the 'real chance test'.
- 272 Temporary Protection Visas place refugees in an ongoing state of uncertainty and prevent meaningful settlement, creating hardship for refugees and denying Australia the benefit of their contribution.
- 273 Labor in Government will abolish Temporary Protection Visas **and Safe Haven Enterprise Visas and provide permanent protection to all those currently holding such visas.**ⁱⁱⁱ

Settlement of Refugees

- 274 Australia's settlement support services are regarded as the best in the world. Labor is committed to maintaining this and accordingly will ensure that sufficient focus and resources are directed to our settlement services.
- 275 Labor will provide appropriate English language tuition as an essential settlement service which is critical to the achievement of full social and economic participation of refugees.
- 276 Labor will seek to improve the availability and integration of Commonwealth-funded migrant and settlement services. Labor will ensure settlement service policies are:
- Informed by advice from the Refugee Resettlement Advisory Council, the Settlement Council of Australia and other key stakeholders and the community; and
 - Coordinated in partnership with state and territory governments, local councils, community organisations and service delivery providers.
- 277 Labor is committed to ensuring that services across government for refugees are culturally responsive, universally accessible and consistent with Labor's social inclusion agenda. **Recognising the value of community support groups in providing settlement services, Labor will support the involvement of such groups.**
- 278 Labor acknowledges the positive effect regional settlement can have on rural locations. Labor supports the settlement of suitable humanitarian entrants in regional locations with the support of state and local governments and local communities.

The Economic and Social Contribution of Migrants and Refugees

- 279 Labor recognises the economic and social contribution throughout our nation's history. Labor regards Australia's diversity as a source of national strength and a critical factor in nation building.
- 280 Australia is and will remain a society of people drawn from a rich variety of cultural, ethnic, linguistic and religious backgrounds. Australia is and will remain a multicultural society.

281 To support Australia's multicultural society, Labor's migration policies will:

- **Make available the right to apply for citizenship, to those permanent residents who have held such status for twelve months or more;**
- Remain non-discriminatory;
- Respect the heritage and traditional customs of migrants and their children;
- Recognise the importance of all aspects of the migration program, including skilled, family and humanitarian streams;
- Support Australia's social cohesion by encouraging universal respect for Australia's democratic beliefs and laws, and the rights, responsibilities and privileges of Australian citizenship;
- Consistently oppose those who foster extremism, hatred, ethnic division or incitement to violence; and
- Be evidence-based, supported by rigorous research and evaluation.
- **Oppose any attempt to introduce English language testing to IELTS 6 standard for any migrant or person seeking asylum or refugee other than those seeking employment or education that genuinely requires such a standard to be met.**

282 Labor believes that there is an inequity for New Zealand citizens living in Australia under the terms of the Trans-Tasman Travel Arrangements (TTTA). Labor believes that there should be consideration given to the permanent residency status and potential citizenship arrangements for New Zealand citizens living in Australia under the terms of the TTTA.

i

Turnbacks – The Guardian article dated 30/10/17 *Australia's asylum boat turnbacks are illegal and risk lives, UN told* :

<https://www.theguardian.com/australia-news/2017/oct/30/australias-asylum-boat-turnbacks-are-illegal-and-risk-lives-un-told>

Also see the Kaldor Centre's [Factsheet on Turning Back Boats](#).

ii

The **Stone Review process**. The Kaldor Centre has information about the Stone Review entitled *Refugees with an adverse security assessment by ASIO* dated 23 May 2016 at the following link <http://www.kaldorcentre.unsw.edu.au/publication/refugees-adverse-security-assessment-asio>

iii

The Refugee Council of Australia's fact sheet about Temporary protection visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) dated 1 May 2016 can be found here:

<https://www.refugeecouncil.org.au/getfacts/settlement/temporary-protection-visas/>

The Kaldor Centre's [Factsheet](#) is also informative.