

## EXPLANATORY DOCUMENT FOR CLAUSE 287

### Chapter 9 A fair go for all

#### AMENDMENT

Clause 287 to be amended by inserting the words in italics as follows:

287. 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.*

#### EVIDENCE

##### 1. Contrary to aspects of the Platform

239. Labor recognises that, under the Refugee Convention, asylum seekers 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’.

240. Labor believes that as a country Australia must not harm people.

286. Labor will ensure that asylum seekers who arrive by irregular means will not be punished for their mode of arrival.

##### 2. Refugee Convention

In discussing the 1951 Refugee Convention, the United Nations High Commissioner for Refugees states:

“The core principle is non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom. This is now considered a rule of customary international law.”

<http://www.unhcr.org/en-au/1951-refugee-convention.html?query=refugee%20convention>

The Kaldor Centre of UNSW in their factsheet *Turning back boats* explains:

“Indonesia, Sri Lanka and Vietnam are not parties to the Refugee Convention. Refugees in Indonesia have limited legal protections and are liable to detention. In Sri Lanka there are reports of torture by Sri Lankan security forces, and in Vietnam a range of serious human rights concerns have been raised, including state violence against detainees. By turning boats back to Indonesia, Sri Lanka and Vietnam, Australia is therefore at risk of breaching its *non-refoulement* obligations.”

### **3. Turn back to danger**

One of the clearest dangers in turning back boats at sea is that we are turning people back to danger. Melissa Parke, the former MP for Fremantle put it this way:

“A great many of them will still be refugees fleeing persecution, they will still need a safe haven and they will still be facing uncertain and precarious existences without rights in transit countries. They may well still die fleeing persecution on a different sea or trapped in an airless container. We do not reduce the risk to these people by taking away one of their escape options; we merely displace the risk to another time and place.” Hansard p3442, 27 March 2014

There could be no more graphic demonstration of the futility of turning back boats at sea than the current plight of the Rohingya. In August 2015 a flotilla of boats carrying thousands of Rohingya in the Andaman Sea was turned back from Malaysia, Thailand and Indonesia. Many died whilst stranded at sea. Malaysia and Indonesia later agreed to provide temporary protection to many. The Philippines offered refuge to 3,000. The Australian government offered no assistance. Currently there are an estimated 800,000 Rohingya in camps in Bangladesh having fled since August 2017 when the Myanmar army launched security operations in the northern Rakhine state. The number of deaths has not been determined but is likely to be more than 10,000 according to Medecins Sans Frontieres: <http://www.abc.net.au/news/2017-12-14/rohingya-death-toll-in-the-thousands-says-msf/9260552>