THE DROWNINGS’ ARGUMENT

Australia’s inhumanity: Offshore processing of Asylum Seekers
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Labor for Refugees
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Labor for Refugees

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Dying to get here
Marg Hutton

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Tony Kevin

Morrison’s law of intended consequences
Tony Kevin

Regional Protection, Family Reunion
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Summary and Conclusions
Introduction

As a group, Labor for Refugees is always looking for opportunities to facilitate the political debate for a more ethical and durable asylum seeker policy. We are concerned that the only option being considered at present is Australia contracting out its obligations to two small and poor nations that lack the capacity to undertake assessments of asylum seeker claims or to offer the necessary protections for human life. We regard this version of offshore processing, with its determination that no person sent to Manus Island or Nauru will ever be resettled in Australia, as a complete abnegation of our international obligations and a travesty of human rights.

We see the current debate being derailed by the cruel and duplicitous ‘drownings’ argument falsely dressed up as a humanitarian response. To counter this, Labor for Refugees approached 10 refugee advocates who have been active and influential in their contributions to the refugee debate. We asked them to discuss the proposition that this particular package of measures will never be good policy even when based on the rationale that it will prevent loss of life by drowning.
Introduction

What makes good policy?

Compassion as the basis of one person’s actions towards another in need is a very fine sentiment in its recognition of moral significance of each and every human being. As the basis for political action, it can however lead to policies that are justified on the basis of the moral superiority of one group over another and a refusal to acknowledge the rightful claims of those in need to make decisions in their own best interests.

This ‘we know best’ attitude pervades much of Australian political thinking in responses to indigenous people, long term unemployed and other welfare beneficiaries. In recent years, it has been co-opted as a false form of humanitarianism towards asylum seekers who try to reach Australian shores using the services of ‘people smugglers’. It is right to be deeply concerned about the deaths at sea that result from the decisions people take to get on to leaky, unsafe boats; it is not right however to dress up this concern in policies that refuse to recognise the depths of despair that force asylum seekers to take such desperate actions or to acknowledge that these policies have contributed to this situation.

The current deterrence policies have already left a deep and ignominious stain on Australia’s character and standing. Our interests and those of future asylum seekers will be better served by discarding the mealy mouthed justification that harsh and punitive measures are the only way to stop these drownings.

The effectiveness of a government will be judged by its ability to develop and implement good quality policy that effectively meets the various challenges facing that society. The quality of the policy we implement in response to people seeking asylum in Australia can be measured in very similar ways to that in any other area of government activity.
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It is our belief that good quality policy whatever the topic will share a number of characteristics. We believe that asylum seeker policy should share these same characteristics. Criteria for judging the quality of any policy and its implementation should include the following measures:

• be directly relevant to the problem being addressed
• be cost effective and beneficial
• not create undesirable secondary effects
• not threaten the democratic or human rights of those affected
• be robust and durable over time
• ensure Australia’s reputation as a global citizen is maintained and enhanced
• provide high quality and ethical leadership to all stakeholders
• represent an equitable sharing of the burden and responsibility to find solutions
• be transparent in its operation and accountable in its outcomes.

You will note in reading the various contributions in this publication that the writers address one or more of these criteria. In all cases, they conclude that the policies being implemented fail to qualify as good policy.

Our contributors

In his essay, Julian Burnside QC points out that, while the ‘drownings’ argument provides a ‘vaguely respectable excuse for harsh policies’, the Prime Minister and the Minister for Immigration are in fact lying and deceiving the public with their expressions of concern. This excuse ‘... opens the way to mistreat asylum seekers who have not drowned, and helps them pursue the darker purpose of keeping refugees out’.
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Misha Coleman from the Australian Churches Refugee Taskforce discusses the enormous cost of policies of deterrence and asks whether we can afford such expenditure on initiatives that, on any pertinent measure, are not working. She reports findings of the Taskforce which concluded that ‘... we have reached this tipping point – where our expenditure on detention and deterrence policies is so great that there is no fiscally responsible argument that can be made to justify it’.

Ben Saul, Professor of International Law at the University of Sydney, poses two questions: is offshore processing necessary to realise the claimed policy aims, and are the associated costs proportionate or excessive for what is being achieved. He judges offshore processing to be a cruel method of dealing with asylum seekers and points out there are a number of effective alternatives.

Professor James Hathaway, a leading authority on international refugee law and formerly Dean of Law at the University of Melbourne states that there is nothing wrong with international refugee law. But, he says ‘... there is a lot wrong (but that can be fixed) with the current atomised and uncoordinated system for implementing our duties to refugees’. In his view, ‘... the solution is not just to send money. If transfer of resources is to be meaningful, it must absolutely be based on verifiable respect for refugee law obligations in the recipient states’.

Pamela Curr from the Asylum Seekers’ Resource Centre contrasts the response by Italy to drownings off its coast in 2013 to that of Australia in reaction to the multitude that have occurred off Christmas Island. Whereas the public outcry in Italy prompted the Italian Government to launch a new rescue policy, the Australian Government failed to initiate any new rescue policy in response to the tragedy off our shores. Instead, ‘... the Government, Navy and Customs followed the same old procedures which failed so often’.
The Federal Member for Chisholm and former Speaker in the House of Representatives, Anna Burke, notes that Australia does not have, nor ever has had, a crisis on our borders from asylum seekers. She reminds us that ‘... there is no moral virtue in abdicating our responsibilities to asylum seekers by contracting out their detention to other nations’. In her call for a debate based on fact and not hysteria, she asks that politics be put aside so that we can work together to prevent more deaths.

Independent researcher and creator of the website sievx.com, Marg Hutton points out that this is not an either or debate. A call to end the cruel practice of offshore mandatory detention is not ignoring the tragedy of drownings. If government actions were truly driven by compassion, we would see very different responses to the calls for help from boats in distress.

Melissa Parke, the Federal Member for Fremantle asks why, if we are so concerned about people taking dangerous boat journeys, we punish them after they have completed these journeys rather than working to prevent them happening in the first place. In her words, ‘... 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’.

Tony Kevin, a former career public servant in foreign affairs draws attention to the heavy price Australia is paying for the Coalition Government’s claimed success in ‘stopping the boats’. He warns that Prime Minister Abbott is walking a very fine line risking deaths with the towbacks, jeopardising Australian relations with Indonesia and damaging Australia’s global standing. The basic question underlying the horror of Manus Island is whether Australia has violated its duty of care to the people it sent there.
Introduction

In her contribution, refugee advocate Kate Jeffery speaks of the shock and dismay people experienced on learning that ‘boat people’ were drowning in their attempts to reach Australia. The picture of Christmas Islanders standing helplessly on shore as people died in the storm-whipped sea is one that is difficult to forget as are the stories retold in the documentary *Between the Devil and the Deep Blue Sea*.

Some politicians and commentators concluded that the only solution was to deter people with harsh punitive measures. Refugee advocates share this repugnance that people are drowning but reject the idea that this is the only way to handle the situation. As Kate states, these same advocates point to availability of other approaches that are more consistent with humanitarian principles and with international law. They also question current policy settings which influence people’s decisions to risk this journey.

**Alternative approaches**

The writers have put forward alternative proposals to the discredited approach pursued by current and previous governments. Their proposals share a strong ethical base that reflects a commitment to a robust moral framework as well as support for mechanisms that are both pragmatic and resilient. A recurring thread is the potential to work with countries in our region, especially Indonesia, to reach a durable and more humane solution and the need for Australia to provide greater support for the work of the UNHCR (United Nations High Commissioner for Refugees).

Two alternatives are discussed by Julian Burnside QC. The first involves developing a real regional system for offshore processing whereby Australia would assess claims in Indonesia before people got onto boats. For those judged to be refugees, resettlement would be offered in a finite
specified time. For those arriving in Australia without papers, Mr Burnside has proposed that they be detained initially for assessment and after one month be required to live in regional towns until their refugee status is determined.

Misha Coleman suggests that ‘... significant and ongoing cost savings could be found by shifting from a punitive approach through offshore detention camps, to onshore community based detention or similar alternative’. She highlights a range of recommendations by the Australian Churches Refugee Taskforce including the establishment of a comprehensive review of all spending relating to asylum seekers, in particular the exploding cost of offshore processing.

Professor Saul recommends that Australia should increase its contribution to the UNHCR to enable an increase in its capacity to process refugees in Indonesia within three months, and to provide guaranteed resettlement in six months.

In his contribution, Professor James Hathaway proposes that Australia should take the lead to develop a system that offers refugees real protection. Australia ‘... could, and should, take the lead on getting governments to agree to a system of collective responsibility that would ensure that smugglers are not essential to a refugee’s ability to access real and durable protection’. This would involve a two-fold regime, the first being a sharing of the financial burden and the second a sharing of the burden of responsibility. He suggests the establishment of a ‘... mechanism to oversee the common, but differentiated, responsibility and resource transfer regimes’.

Pamela Curr offers a warning that by adopting an extreme military model that makes war on asylum seekers rather than a more compassionate and humane approach, we will be judged harshly by history and we will deserve this judgement.
Anna Burke calls on Australia to take its proper share of the burden of offering protection to asylum seekers. The government should immediately undertake a thorough and public investigation into the events on Manus Island and Nauru and cease transferring asylum seekers to offshore facilities. It should also reinstate an increase of the humanitarian intake to 20,000 places.

Marg Hutton sees the claimed war on people smugglers as in fact a war on asylum seekers arriving by boat. She believes that if we were really serious about preventing the drowning deaths, we would act swiftly and do everything possible to respond to the boats in distress.

In her adjournment speech to Parliament, Melissa Parke called on both sides of politics to adopt a ‘... benevolent bipartisanship and a genuinely regional burden-sharing approach’. Measures she nominated included significantly increasing our humanitarian intake, working with other countries in the region to make conditions safer in transit countries and speeding up the processing of claims. She also pointed to the need to maintain sufficient levels of foreign aid to address the root causes and improve conditions and the rule of law in the places from which people are escaping.

Labor’s response to the government’s attempts to deflect any responsibility for the horror on Manus Island in February 2014 is summed up by Tony Kevin as timid. He sees that it could have been the perfect opportunity for Labor to decide and announce a change in policy including an admission that the current solution is unsustainable. While pointing out its preference for an orderly regional burden-sharing and processing solution, Labor should call for the closure of Manus and the reopening of detention and processing centres in Australia.

Kate Jeffery nominates two issues that contribute to people risking the perilous boat voyage to Australia. These are the absence of genuine resettlement pathways from
within the region and the continuing restrictions on refugee family reunion. She advocates a number of policy changes to create a comprehensive regional protection framework and to establish the basis for refugee family reunion to recognise the level of pent up demand, to remove the bitterness and dysfunctionality inherent in the current system and to contribute to better relationships within the region and Australia.

In its 2014 Budget the Federal Coalition Government has made a number of changes purportedly to reduce government expenditure. These changes, however, do nothing to improve the quality of policy being implemented. Measure to increase places under the Special Humanitarian Program are based on deceit in that they have become available through the refusal to offer permanent residency to any asylum seeker arriving by boat; changes to the use of the Christmas Island detention centre, upgrades to medical services and the closure of onshore processing centres will reduce levels of transparency and accountability surrounding the handling of asylum seekers; and the severe cuts to support services will make life even more difficult for people seeking assistance.

In recent times, there have been small signs of hope that a change of attitude is possible within the Australian Labor Party. At its State Conference in November 2013, the Western Australian Branch passed a resolution calling for the end of offshore processing. The Victorian Branch, at its State Conference in May 2014 carried unanimously an urgency motion calling for offshore processing to end. It is hoped that a similar urgency motion will be considered at the next State Conference in New South Wales.
In early April 2014, Scott Morrison was crowing about the fact that, for 100 days, no refugee boats had arrived in Australia.

He did not mention that a number of boats had tried to get here, and that their occupants were sent back to Indonesia in orange lifeboats. The fact that they tried to get here is significant, because we can be confident, on the evidence of the past 15 years, that a high proportion of them were genuine refugees legally entitled to protection. But that is not something that engages Morrison’s Christian spirit.

Neither is he concerned, it seems, that the people we pushed back will make landfall in Indonesia, a country which has not signed the Refugees Convention and that they risk being sent from Indonesia back to their country of origin, where they face persecution.

So that is the source of Morrison’s delight: we are indirectly sending people back to a place of persecution, in plain defiance of our central obligation under the Refugees Convention.

But he is also pleased with himself because he can say he has saved them from drowning.
Let’s be very clear about this: every death at sea is a tragedy. No-one wants to see refugees die in their attempt to escape persecution, but the often-recited concern about refugees drowning is just hypocritical propaganda.

People like Abbott and Morrison express their concern about refugees who drown. They are not sincere, but it provides a vaguely respectable excuse for harsh policies. Let me be plain about this: when Abbott and Morrison say they are worried about refugees drowning on their way to Australia, they are lying: they are deceiving the public. It opens the way to mistreat asylum seekers who have not drowned, and helps them pursue the darker purpose of keeping refugees out.

The explanation for a policy of deterrence has gone through three major phases.

‘Illegals’

From the time of the Tampa episode in 2001, refugees were disparaged as ‘illegals’, ‘queue-jumpers’ and people who had thrown their children overboard. Each of those tags is false. I mention this because, apart from anything else, it shows that the party which calls itself ‘Liberal’ is perfectly happy to lie to the public in order to pursue policy objectives.

It is a lie to call refugees ‘illegals’. The word suggests plainly that the person has committed an offence. But it is not an offence to come to Australia, without papers, without a visa, without an invitation, and ask for protection.

This should not be mistaken as a partisan attack on the Coalition: the Labor Party has been conspicuously silent on the subject. Both in opposition and in government, Labor has ducked the opportunity to correct the public debate by telling the truth: that boat people are not illegal, that there is no queue. It is a painful irony that Labor has failed to make the very simple point that Article 14 of the Universal
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Declaration of Human Rights gives every human being the right to seek asylum in any territory they can reach, and that Australia played a leading role in the creation of the UDHR, and that a Labor icon, Doc Evatt, presided over the General Assembly of the UN when the UDHR was entered into force.

But that was a time when Labor values were more than just a marketing campaign formulated by reference to populism, and completely untroubled by humanitarian considerations.

People smugglers

Next, the rhetoric swung to an attack on people smugglers. Soon after Tony Abbott won the leadership of the Coalition, he started criticising the Rudd Government for the fact that boat people were arriving in Australia. Rudd, who had introduced some well-designed reforms in July 2008, responded swiftly: he attacked the people smugglers. In April 2009, Rudd said people smugglers were the ‘absolute scum of the earth’ and should ‘rot in hell’. He also said that ‘people smugglers are engaged in the world’s most evil trade and they should all rot in jail …’

Rudd’s venom was a response to visible deaths of asylum seekers after an explosion sank a boat carrying asylum seekers off Australia’s north west coast. Rudd apparently recognised that abusing asylum seekers was no longer a good look, but people smugglers were fair game. He had overlooked that not all people smugglers can be conveniently fitted into the same miserable moral category. He seems to have forgotten temporarily that his great moral hero, Dietrich Bonhoeffer, was a people smuggler. So too were Oskar Schindler and Gustav Schroeder.

Schindler’s activities are well-known from Tom Keneally’s book and the film based on it.
It is worth recalling here what Schroeder did. In May 1939, just months before the start of World War II, a ship called the *St Louis* left Hamburg, carrying 900 Jewish refugees. Gustav Schroeder was its captain. The *St Louis* was denied access to every port it approached, despite Schroeder’s efforts. It got as far as Cuba, and was warned off the coast of Florida at gunpoint. Schroeder took the *St Louis* back to Europe and put his cargo ashore in Antwerp. After the low countries were occupied by the Nazis, more than half the refugees on the *St Louis* were captured and ultimately perished in concentration camps.

In light of the current political attitudes in Australia, it is worth noting that Captain Schroeder was a people smuggler. Those countries who denied the *St Louis* the right to land might look back now and ask whether their decision was a policy success or a humanitarian tragedy.

The ferocity of attacks on people smugglers increased when Australians watched, on television, the terrible wreck of an asylum seeker boat on 15 December 2010. It was a shocking sight, and significantly increased the political impact of attacking people smugglers.

Of course it is tragic when asylum seekers die in a desperate attempt to reach protection. It is also tragic when they stay behind and are slaughtered. The key difference is that, when they stay behind and become another statistic in the grim arithmetic of ethnic cleansing, we do not empathise with them; our conscience remains untouched. When we learn that they have perished in an attempt to seek safety here, it seems different.

Why is that? Is it because they have tried to engage us? Is it because the ethics of proximity has begun to operate, so that we feel a heightened sense of responsibility for them? Is it because, seeing their last moments on the TV news, we understand their agonies, although perhaps not the desperation which drove them? Is it simply because, in the
unhealthy environment of current domestic politics, their fate is automatically drawn to our attention by politicians trying to exploit the occasion for their own political advantage?

If you had been a Jew in Germany in 1939, would it have been better to chance your arm with a people smuggler (Schindler, Bonnhoeffer, Schroeder …) or stay put and face a different risk? And which is more tragic: to die passively or die in an attempt to escape? One thing is certain: if the Taliban get you, you are just as dead as if you drown.

Most Australians have trouble understanding what it means to put your life in the hands of a people smuggler, or why anyone would do it. Try to imagine that you are a refugee: you are part of an ethnic minority in Afghanistan. Your people are the target of ethnic cleansing. You have friends and family members who have been killed by Taliban snipers and suicide bombers. You know children who were blown to bits when the Taliban used them as mine-sweepers. You know of the teenager who was forced back to Afghanistan from Nauru in 2002 and who was hunted down by the Taliban: when they found him in his village, they dragged him out of his house and threw him down the village well … then dropped a hand grenade in after him.

You have borrowed enough money to get to Australia: it is cheaper than getting to Europe or America. With your family you make your way to Indonesia, passing through Muslim countries which allow free passage to Muslims, but do not offer protection because they have not signed the Refugees Convention.

In Indonesia you can go to the UNHCR and get a card which vouches that you are a refugee, but it doesn’t mean much because the Indonesian Government will jail you if they find you, and you aren’t allowed to work, and you can’t send your kids to school. You will wait in the shadows
until some country offers to resettle you. It could take 20 or 30 years.

There is one line of escape: you can pay a people smuggler who will take you to Australia by boat. It is dangerous, but it is a chance for freedom and safety, for you and for your kids.

Imagine yourself there. What would you do?

What would most Australians do? What would our political leaders do, if they were in that position? I challenge Scott Morrison and Tony Abbott to say plainly what they would do in that situation.

I know I would take the risk, and I suspect most Australians would do the same. You know that if your luck runs out you could die trying to reach safety.

Of course it is tragic that people drown trying to get here to safety. But it happens, and it will keep happening. Our compassion for the drowned should be harnessed to a genuine rethink of our refugee policy. One thing is sure enough: if the risk of drowning is not a deterrent, then shipping them off to PNG or Nauru won’t be.

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By small degrees, sections of the public began to realise that people smugglers were not necessarily quite as wicked as the politicians had made out. The prosecution of Ali al Jenabi, so well retold in Robin de Crespigny’s book the People Smuggler, drew attention to the simple, central fact that people smugglers service a need. The existence of people smugglers does not create a demand for them. When you are running for your life, you will take whatever services are available.

And the graphic scenes of horror as a boat smashed to bits on the coast of Christmas Island gave the Gillard Government a new line of attack: the drowning excuse. An
expert panel was commissioned to devise policy options which would prevent people from risking their lives at sea while seeking asylum in Australia.

The Terms of Reference asked the Panel to provide advice and recommendations to the government on policy options available to prevent asylum seekers risking their lives on dangerous boat journeys to Australia. It might be thought that one policy setting suggested itself as pretty obvious: a genuine processing centre in Indonesia, with swift, safe resettlement for those found to be refugees. But that would involve co-operating with Indonesia.

The following facts are uncontroversial:

- Boat people come here principally from Afghanistan, where the Hazaras are the target of Taliban genocide, and from Sri Lanka, where the Tamils are being persecuted in the wake of their failed liberation movement. Those two groups have dominated boat people numbers in the last few years.
- Hazaras and Tamils are really desperate in their bid for freedom. Apart from any other consideration, a person has to be desperate to take the risks they in fact take in their attempt to reach safety.
- Most boat people who arrive in Australia end up being assessed as genuine refugees, legally entitled to our protection: over 90 per cent of them are ultimately successful in their asylum claims. This compares with a success rate of about 40 per cent among asylum claims of people who arrive here by air on short term visas, such as business, tourist or student visas. The different success rates are readily explained: the boat trip is dangerous – it is a mark of sincerity that a person takes the risks it involves.
- Some of the boats carrying asylum seekers sink, and some of the refugees drown. The number who have
drowned is not clear, but it looks like about 2–3 per cent of them since 2000.

- A person facing death or torture is not likely to be deterred by the prospect of being locked up in a detention centre, or even by the risk of drowning. Desperate people will take desperate measures. The experience of the Jews in the 1930s and the Vietnamese in the late 1970s tells us that. Common sense and ordinary experience tell us that. Over the years I have asked Hazaras I know personally, and who came here as boat people, whether they had been aware of the risks before setting out. Some did. I asked them why they took the risk: they said that the Taliban represented a greater risk. Others did not: they did not know where they were being taken. For that group, deterrence is not a relevant consideration.

- It is also significant that, at present, asylum seekers who get to Indonesia face the real prospect of being mistreated and jailed by the Indonesian authorities if they are caught. In addition, they are not permitted to work or to send their children to school. I suspect that most Australians faced with the same problem would choose the same solution: take a risk and get on a boat.

One of the strangest phenomena in Australian politics over the past decade is that we are apparently willing to revile and mistreat people who act exactly as we would if we had the misfortune to be in their shoes.

Sincerity?

Are the politicians sincere about the drowning excuse? In my opinion they are not. Members of the Coalition do not care if people drown in their attempts to reach Australia.
Their expressed concern for the drowned is base hypocrisy. This is easily demonstrated.

First, if we started cooperating with Indonesia and established a genuine regional processing centre there, we would put an end to boat arrivals in an instant. If asylum claims were processed fairly in Indonesia, and those found to be refugees were offered swift, safe resettlement, the incentive to get on a people smuggler’s boat would disappear.

Second, the Coalition have said that they will reintroduce temporary protection visas (TPVs). TPVs create a substantial incentive to use a people smuggler. It is often the case that one member of a family will ‘blaze a trail’ to Australia. Once he (it is usually the husband or the oldest son) reaches Australia and is accepted as a refugee, he naturally wants to be reunited with his family. In the ordinary way of things, if the man of the family is a refugee, then it is almost certain that his wife and children are also refugees. TPVs have a condition that prohibits family reunion. The only way the family of a TPV holder can be reunited is by the family using a people smuggler. On 19 October 2001 a refugee boat later designated the Siev-X sank on its way to Australia. By the time a rescue vessel arrived nearly 24 hours later, 353 people had drowned. Most of them were women and children whose husbands and fathers were living in Australia on TPVs.

It is clear that TPVs are an active inducement to use a people smuggler. Abbott and Morrison intend to reintroduce TPVs. When they say they are concerned about people drowning in an attempt to reach Australia they are lying.

Of course, this is not the least of their hypocrisy. Abbott and Morrison are conspicuous Christians. That is a fine thing, but it is irreconcilable with their policy of deterrence. They express concern about people who might drown
seeking protection, and they then wilfully mistreat those who do not drown. They mistreat them deliberately, not least by sending them to Nauru (where the rule of law has broken down) or to Manus island (where the guards are unable to protect them from murderous attacks). The theory of the deterrent policy is that, if the Australian government treats asylum seekers badly enough, then asylum seekers will prefer to face down their persecutors than ask for our help. That is a position which finds no support in the religion which both Abbott and Morrison (and Rudd before them) embrace so conspicuously. Tony Abbott and Scott Morrison might do well to recall the response of Pope Francis when a group of Eritrean asylum seekers perished off the coast of Lampedusa in July 2013. He said: ‘The culture of well-being, that makes us think of ourselves, that makes us insensitive to the cries of others, that makes us live in soap bubbles, that are beautiful but are nothing, are illusions of futility, of the transient, that brings indifference to others, that brings even the globalization of indifference. In this world of globalization we have fallen into a globalization of indifference. We are accustomed to the suffering of others, it doesn’t concern us, it’s none of our business.’

He could have been speaking of Australia, although he had not reckoned on deliberate cruelty as a deterrent.

**Offshore processing**

Both major parties have suggested ‘offshore processing’. The difficulty with this is first to decide what it means, and then to see whether it is workable.

If it means processing asylum claims and resettling those found to be refugees, then the choice of an offshore processing place is a reasonably straight-forward practical and political problem. However the major parties do not appear to mean this. Rather, they would send boat people
offshore (to Nauru or PNG) for processing, but it is not part of their proposals that those accepted as refugees be resettled in Australia, and there is no definite plan about where or when they will be resettled.

Calling this ‘offshore processing’ is not accurate: it is a fig-leaf to cover the fact that we are trying to push refugees away permanently.

**Nauru**

Nauru has a land area of 21 square kilometres and a population of around 10,000 people; it does not have a sufficient supply of food or water for its own citizens. Its ability to receive and resettle refugees is necessarily very limited: in theory, it may be able to accommodate an additional 10 or 20 people a year, although its willingness to do that is uncertain. It is unthinkable that Nauru could receive thousands of refugees on a permanent basis. Using Nauru is, at best, a warehousing operation.

The use of Nauru to warehouse people leaves unanswered the question of resettlement. Other countries were reluctant to help Australia resettle refugees caught up in the Pacific Solution 10 years ago. Those who were not returned to their country of origin were eventually resettled in Australia, despite Mr Howard’s fervent promise in 2001 that none of them would be resettled here.

Nauru has recently signed the Refugees Convention, but it has virtually no capacity to process their asylum claims or look after their welfare: in 18 months, just one asylum claim has been processed. The balance of the task will all be done by Australia and at Australia’s expense. Convention countries which accept a person’s asylum claim are required not to send the person back (directly or indirectly) to a place where they face the risk of persecution. It is difficult to see what Nauru will do, because it is tiny and bankrupt and not able to look after its own population adequately.
without external support. Other countries are not showing any enthusiasm to resettle refugees to help Australia. After all, Australia gets a modest enough number of refugees, and we are showing ourselves to be cruel and selfish in our dealings with boat people. We will not get far in an attempt to persuade other nations to set aside the ‘globalisation of indifference’ on our behalf, because we are among the greatest offenders.

There is another difficulty with Nauru. Late in 2013, Nauru’s only magistrate made a decision which did not please the Nauruan Government. It moved to deport him. The Chief Justice of Nauru (who, like the magistrate, lives in Australia) issued an injunction to restrain Nauru from deporting the magistrate. The government ignored the injunction and deported the magistrate anyway.

The Chief Justice decided to go to Nauru to sort things out. The Government of Nauru cancelled his visa.

Nauru has just one magistrate, and just one Supreme Court judge. Nauru made their judicial functions impossible to perform.

The rule of law has collapsed in Nauru. The Abbott Government has said virtually nothing about the situation, because it suits Australia very well if the rule of law fails in Nauru. If eventually Nauru starts processing refugee claims of the people we have trafficked there, people who receive adverse decisions will have a right to challenge those decisions in the courts. And if their constitutionally guaranteed human rights are not respected, they can seek redress in the courts. But when the rule of law has failed, there can be no confidence that legal challenges by asylum seekers will be heard and determined according to law. If history is any guide, the judiciary will be in the sway of the government, and decisions will meet the government’s wishes.
The former magistrate and the former Chief Justice were honest people who acted independently. There is no reason to be confident that their replacements will be equally independent.

And it is obvious from the silence of Abbott and Morrison that they do not want asylum seekers to be accorded the rights which, on paper, Nauruan law offers them. Australia is pursuing a policy of deterrence, and it is an element of that deterrence to think that, if you arrive safely in Australia, you will be sent off to a lawless place where neither your rights nor your safety are certain.

**Manus Island, PNG**

Manus is the other place of offshore processing. It is an island north of Port Moresby. It is significantly infested with malarial mosquitos. A recent description of conditions there says:

“I live in a container with four people. The room is too small. It is crowded. I have no privacy. There are many mosquitos. I have been bitten a lot, many times. I have a fever. The officers gave me tablets and an injection for malaria. But I was not tested for malaria.

It is very hot and humid as well. When it rains, then after rain, it is very humid and it is smelly as well. The toilets are disgusting. They do not work. They smell. Sometimes the water stops. Some toilets don’t have doors or locks.

The showers are dirty and do not work properly. There is no hot water. The water pressure is low. Sometimes the water stops and doesn’t turn back on again and we cannot rinse ourselves.

The food is very bad. The food goes off very quickly. There are always insects and cockroaches in the food.”

During the day on 16 and 17 February 2014, the locals had been shouting abuse at the detainees and threatening to kill them. On the evening of 17 February, locals stormed the
detention centre. Among them were guards employed by G4S. They attacked the asylum seekers. About 90 asylum seekers were seriously injured. One of them, Reza Barati, was killed: a local hit him savagely with a plank which had two long nails through it. Barati fell to the ground bleeding profusely. Another local then picked up a large rock and brought it down on Barati’s head, killing him.

There has been no effective investigation by PNG police or Australian police. A PNG Supreme Court judge, David Cannings, instituted an enquiry of his own motion. The PNG government shut it down. Australia did not protest. He instituted a new enquiry: the PNG government shut that down. Again, Australia did not protest. As in the case of Nauru, the Abbott government remained largely silent, other than uttering a few platitudes about its willingness to co-operate with PNG.

It suits Australia that detention on Manus Island is so dangerous: it is another element in the logic of deterrence. Not only must asylum seekers face the perils of the sea, they face the risk of detention in a place where they may be attacked, beaten and possibly killed. In short, they face risks which, for some, may seem equivalent to the risks which persecution in their home country represents.

‘Offshore processing’ as practised by the Gillard Labor Government and by the Abbott Coalition Government is a cruel fraud. It is not about processing at all. It is not about saving lives at sea. Both schemes only come into operation after asylum seekers have arrived safely in Australia. In short, it operates only after they have survived the risk from which we want to protect them.

Thus, the Pacific Solution (Mark I or Mark II) is not a solution to the identified problem. In effect, it is a device to push asylum seekers away if they set sail for Australia. It has nothing to do with processing, and it has nothing to do with saving people from drowning.
'Solutions’ which are misleadingly described, and which do not solve the problem at which they are directed, should be abandoned.

A couple of alternatives

Real offshore processing

I suggest an alternative, genuine, form of offshore processing, which is for Australia to process asylum claims offshore (in Indonesia, before they get on a boat) and, for those assessed as refugees, promise resettlement in a finite, specified time.

The essential elements of this proposal include:

• Our annual refugee intake would need to be increased. It is presently set at 13,750. It should be increased to 30,000 per year.

• The processing has to be fair. Experience suggests that, when processing is not subject to judicial oversight, the result of the process owes more to political considerations than to the merits of the particular claims. Experience on Nauru from 2001 to 2005 threw up some notorious examples of grossly unfair processing.

• The increase in refugee places has to be sufficient to keep their waiting time in Indonesia to a reasonable length: one year at the most. A longer waiting time than that may prompt some to try a quicker route.

• We would have to enlist Indonesia’s cooperation so that the refugees could live without harassment while they waited in Indonesia for resettlement. In particular, it is desirable that they be allowed to work while in Indonesia awaiting resettlement.

• We would have to warn them about the risk of getting on a smuggler’s boat.
This sort of offshore processing would in fact solve the problem of people risking their lives at sea. By processing refugee claims in Indonesia, and increasing our refugee intake, we would create a system for safe, orderly resettlement. We can do it. But we won’t do it unless our concern about people drowning at sea is genuine.

A real regional solution
I do not advocate an open borders policy. Initial detention for people who arrive without papers is reasonable. But it should be limited to one month, for preliminary health and security checks. After that, release them on interim visas with four crucial conditions:

- they must stay in touch with the Department until their refugee status has been determined;
- they are allowed to work or study;
- they are allowed access to Centrelink and Medicare benefits;
- they are required to live in a regional town until their refugee status has been determined.

There are plenty of country towns which are slowly shrinking as people leave. The National Farmers Federation estimates that there are 96,000 unfilled jobs in country areas. It is highly likely that many asylum seekers would get jobs.

How this would work can be tested by making some assumptions.

First: numbers. The average arrival rate of boat people over the past 20 years is about 2,000 per year. In 2001 (the year of the Tampa episode), just over 4,000 boat people arrived. (It is a striking thing how the arrival of 4,000 frightened people threw the country into a panic.) In 2012, 25,000 boat people arrived. That is roughly equivalent to the annual arrival numbers in the late 1970s, as we resettled Indo-Chinese refugees, with no observable social difficulty.
The arrival rate has fallen away again, but let us assume that the 2012 figure becomes the new normal.

And second, let us assume that all of them stay on full Centrelink benefits.

These are both highly unlikely assumptions.

It would cost us about $500 million a year. All that money would be spent in the economies of regional towns on rent, food and clothing, to the great benefit of the economy of the regional towns where they lived. It is not difficult to see the benefits to the economy of towns which are slowly losing population to the capitals.

By contrast, we are presently spending about $5 billion a year mistreating refugees. In other words, by treating them decently we could reduce the cost of the system by about $4.5 billion a year.

It is not hard to think of national infrastructure projects which might be funded from the savings. A billion dollars a year could be turned to creating more public housing for homeless Australians; another billion dollars a year could be applied to building schools or hospitals, or used to reduce the deficit or reverse tertiary education funding cuts.

There are many ways these ideas could be implemented. A few billion dollars a year can be used to damage asylum seekers profoundly, or it can be used for the benefit of the community in which asylum seekers live pending refugee status determination and for the benefit of the wider community. But it won’t happen until someone shows enough leadership that we are behaving badly because we have been misled about the character of the people who wash up on our shores.

Let us hope that, one day soon, Australia will show that it can return to its true character.
Drowning in our seas, drowning in other seas – we just can’t afford it!

MISHA COLEMAN

The Australian Churches Refugee Taskforce is an initiative supported by the National Council of Churches in Australia, and the Steering Committee is comprised of 21 leaders who represent nine Christian churches and three ecumenical bodies. The Taskforce has a further 357 Christian entities who are network members. See http://www.australianchurchesrefugee taskforce.com.au/about-us-members/

1. When voters in focus groups say they think asylum-seeker policies are ‘working’, you have to ask what definition of ‘working’ they’re using? ‘Working’, as defined by the government AND the opposition, actually means not drowning in OUR seas. When we put boys, girls and babies into the infamous orange ‘lifeboats’, psychologically we wash our hands of where they arrive or whether they arrive.

One lifeboat survivor described his experience thus: the journey to Java lasted about three hours before the boat ran aground on a rugged bay near the village of Kebumen. They were 30 metres from the beach in high surf, but there was
little choice but to jump. ‘We think we will die. We can’t swim’, Ali says.¹

2. We don’t track what happens to those who don’t succeed in having their claims for asylum heard: those on boats who are turned back. But last month, it was alleged that three people died while crossing a river in a jungle they found themselves in after being put into an Australian Government lifeboat.²

Neither do we track those who are subjected to ‘enhanced screening’ – where mums, dads and even unaccompanied kids – mostly from Sri Lanka – are returned to the horrors from which they fled, before being given a fair hearing. This may mean that we are sending these people to another kind of death, just not on our shores. This procedure, ramped up by the former PM Julia Gillard, has not only compromised us as a credible player on the international stage, it has completely compromised the departmental staff members who are asked to implement it.³

3. If the excuse of the Coalition and the ALP is that we need the politics of deterrence to avoid people drowning at sea, then we must ask them whether it is OK for the same people to drown or die somewhere else.

We also need to ask whether we can afford it – especially while our government questions the affordability of ongoing funding for the National Disability Insurance Scheme, the Gonski Reforms and God only knows what else.

¹ http://www.smh.com.au/federal-politics/political-news/we-were-all-sick-returned-asylum-seekers-tell-of-lifeboat-ordeal-to-java-20140301-33sol.html#ixzz2zCkOhkX9
4. Both the Coalition and the ALP say that expenditure on deterring irregular maritime boat arrivals saves us money in the long term – but what is the annual financial expenditure level where this argument becomes false? The Australian Churches Refugee Taskforce (ACRT) say that we have reached this financial tipping point – where our expenditure on detention and deterrence policies is so great that there is no fiscally responsible argument that can be made to justify it.

The Taskforce believes that as well as being a utilitarian tool that enables commerce, money is also a powerful symbol. Its use captures a society’s values and priorities. Communities find money to enact that which they most value and treasure. As an example, a community subject to war can find almost limitless amounts of money to fund the defense of their territory.

5. A budget therefore reflects a community’s core values, its attitude to its poorest citizens and whether it is truly interested in justice. That which a community claims to be unable to afford is actually something the community does not value. Likewise that upon which a nation spends grossly or negligently, and which may result in harm to others says much about a nation’s value system. Spending large amounts of money to punish, and thus degrade the human rights and dignity of people protected by international law is particularly revelatory and destructive.

The Taskforce has made the following recommendations related to expenditure on the detention and deterrence policies, against the backdrop of the Government’s fiscal commitments to restore the Budget to sustainable surplus through ‘sustained and fundamental structural overhaul of
expenditure’ and that in doing so ‘all options are on the table’.\(^4\)

**Costs of current spending – against a global context**

In 2013–14 Australia will spend almost two-thirds as much locking up in detention a few thousand people seeking asylum, as the entire UNHCR spend in the last financial year assisting tens of millions of refugees and asylum seekers worldwide. This is a grossly disproportionate amount of money and is unjustifiable waste in terms of both the financial and human costs; with men, women and children being held in inhumane conditions in detention camps offshore.

The Taskforce recommends that the Australian Government undertake an urgent and comprehensive review of all spending related to asylum seekers, in particular the exploding costs of offshore processing. This could include:

- Accounting for the costs hereto embedded in operating budgets and remaining unfunded over the long term
- Measures to increase the transparency and accountability of these costs; such that rigorous costs-benefits analyses can be undertaken
- Looking at measures to assess the human costs of such policies and compatibility with Australian values and human rights principles
- Readjustment of policy to one that is not only more cost effective but also compassionate and honours Australia’s International obligations.

6. In the last Budget the total costs of detention-related services and offshore asylum seeker management was

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increased by $762 million to **$2.97 billion** for 2013–14. This included almost **$2.87 billion alone** for offshore operations.\(^5\) In addition, the 2013 PEFO contained an item for a rebuild and repair of accommodation facilities at Nauru classified ‘not for publishing’ due to the apparently commercial nature of transaction. (Although reports of cost estimates in early 2012 indicated the reopening of Nauru could cost up to $316 million,\(^6\) and the damages from riots in July 2013 at least **$60 million.**\(^7\)

And the MYEFO released in December 2013 detailed an additional **$406 million**\(^8\) for offshore processing during 2013–14 as well as flagging an additional $2 billion over the forward estimates.\(^9\)

7. The publicly known allocations to **offshore processing alone for the Department of Immigration** for 2013–14 thus far are in excess of **$3.28 billion.** This figure excludes other associated costs which have been earmarked as commercial in confidence and not released, costs for these operations borne by other departments or arms of government, and other significant incentives offered to those countries in order to gain agreement with these operations.\(^10\)

As of 24 January there were **2,288** men, women and children being held in detention camps on Manus Island and Nauru. In addition, 139 people are suggested to have

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\(^5\) This amount was just the Immigration of Department alone. A summary of these figures is available in a Federal Budget Brief available at: [http://www.refugeecouncil.org.au/r/bud/2013-14-Budget.pdf](http://www.refugeecouncil.org.au/r/bud/2013-14-Budget.pdf)


\(^7\) See for example: [http://www.radioaustralia.net.au/international/radio/program/pacific-beat/frenzied-rebuilding-at-nauru-detention-centre/1174980](http://www.radioaustralia.net.au/international/radio/program/pacific-beat/frenzied-rebuilding-at-nauru-detention-centre/1174980)

\(^8\) In addition to this amount it also noted related capital of $165.6 million.

\(^9\) This amount was offset slightly by a reallocation of $58.1 million from proposal to build a new facility at Singleton, which was reversed.

\(^10\) Over and above for instance, what they might normally receive through other bilateral agreements, aid or other arrangements.
‘voluntarily returned’ from offshore processing centres since 18 September 2013.\textsuperscript{11}

8. On these figures this would roughly equate to an expenditure on offshore detention of at least $1.3\text{ million per person}$ for the financial year.\textsuperscript{12} Even if you generously allowed for a doubling of numbers of detainees (and no rise in expenditure) on these crude indicators, it would still equate to a cost of over $1,800 per person a day held in offshore detention.\textsuperscript{13}

These figures are largely for offshore processing and also do not include the additional hundreds of millions for border protection, the Australian Federal Police, Defence forces, and other associated operations.

9. For example, the Budget allocated over $146 million to the Department of Immigration for ‘Border management’; Customs received $342.2 million for civil maritime surveillance and $259.6 million for border protection and enforcement; and Operation Sovereign Borders was

\begin{itemize}
\item[\textsuperscript{12}] This is of course only used as a very rough indicator of overall expenditure, it is not a true reflection of per person costs per se, as it includes all expenditure, including some capital works. Detailed breakdowns and accurate figures are notoriously difficult to obtain, due in part to the complexity and largely to a lack of transparency. Even a 2009 Parliamentary Inquiry into immigration detention was unable to quantify costs, in part due to an ‘absence of detailed cost data that can be analysed’. The detention system is also very dynamic with people being moved constantly between facilities and numbers fluctuating depending on arrivals. The Minister has also recently announced a doubling of capacity at these Offshore Centre’s, though it is not known at the time of this announcement what percentage of capacity was occupied – see: http://www.minister.immi.gov.au/media/sm/2014/sm210839.htm
\item[\textsuperscript{13}] These also broadly reflect reports in January 2012 for Nauru that ‘The DIAC plan also seems to require astronomical running expenses – $400m a year to operate 375 rooms for detainees. That amounts to more than $1m a room a year or about $3000 a room a night’. See: http://www.theaustralian.com.au/national-affairs/policy/nauru-detention-rebuild-costs-dwarfs-resorts/story-fn9hm1gu-1226256685006
\end{itemize}
also allocated at least another $22.5 million in MYEFO. A Lowy Institute researcher also conservatively estimated that Defence was absorbing around $262 million a year in costs for Operation Resolute (the predecessor to Operation Sovereign Borders, of which OSB is arguably now the more intensive).14

Yet by comparison, in 2013 the United Nations High Commission for Refugees (UNHCR) announced that its annual budget (composed primarily of voluntary donations) had reached a ‘new annual high of US$5.3 billion’ at the end of June 2013.15 The UNHCR has staff of more than 7,600 people in over 125 countries and helps tens of millions of people.16

10. With such burgeoning spending at a Commonwealth level, it is a sobering comparison. Particularly given the current policies and practices breach international law,17 have limited evidence in terms of efficacy (in terms of the

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14 It is not possible to easily separate out asylum seeker related costs from other operational matters and as the Lowy comment notes, there it is perfectly legitimate for Defence to be involved in these matters, though as it adds ‘But every frigate loitering off Christmas Island is one not conducting counter-piracy patrolling in the Indian Ocean or regional engagement visits in South East Asia.’ See: http://www.lowyinterpreter.org/post/2013/07/30/asylum-seekers-the-cost-Defence.aspx A similar question could be raised about Customs, with their commitments of assets to OSB hampering Australian efforts to protect our interests and claims in the Southern Ocean. See for instance: http://www.smh.com.au/federal-politics/political-news/question-mark-over-australian-governments-whaling-conflict-zone-patrol-20131218-2zkf3.html

15 http://www.unhcr.org/pages/49c3646c1a.html
16 http://www.unhcr.org/pages/49c3646cbf.html Of these costs also $166 million was budgeted for our immediate region, South East Asia and the Asia Pacific. Even the entire UNHCR budget allocation to Asia, was just $576 million.

17 See, for example, comment by the Australian Human Rights Commission: “Australia’s mandatory detention system leads to breaches of human rights” at: https://www.humanrights.gov.au/immigration-detention-and-human-rights
‘deterrent’ value of mandatory detention)\textsuperscript{18} and there is no discernible strategy for durable, long term resolutions.

For instance, although resettlement for refugees in Nauru, PNG or a third country has been flagged, it is unclear to what extent any realistic costing or assessment of this likelihood has actually been undertaken. Many people, including those who are stateless will not be able to be able to be ‘returned’ or ‘removed’ elsewhere (see further on this below).

11. Considering too that Australia is the ‘only country where immigration detention is mandatory for all unlawful non-citizens (including asylum seekers)’,\textsuperscript{19} these figures represent a grossly disproportionate amount of money and unjustifiable waste in terms of both the financial and human costs.

**Alternatives – savings in human and financial costs**

Considerable cost savings could be found by shifting from a punitive approach through offshore detention camps to onshore community based detention or similar alternatives.

The Taskforce recommends that the Federal Government end the needless waste of offshore detention and explore options for alternatives on mainland Australia. This could include incorporating a clear comparison of policy alternatives, such as onshore versus offshore costs; closed detention versus community based alternatives as part of the review recommended, above.

\textsuperscript{18} Alice Edwards (2011) research suggests ‘Pragmatically, no empirical evidence is available to give credence to the assumption that the threat of being detained deters irregular migration, or more specifically, discourages persons from seeking asylum.’ In Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants UNHCR, Legal and Protection Policy Series, April 2011. p.1.

\textsuperscript{19} As noted by the Australian Parliamentary Library (March 2013) at: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Detention#_ftn6
12. A 2011 research report commissioned by the UNHCR highlighted that not only were Australia’s detention costs high relative to comparable countries, but that Australia could save between an estimated $117–$333 dollars per person per day through implementing alternatives to detention (see table below).20

Table 2: Detention versus alternatives to detention costs

<table>
<thead>
<tr>
<th>Country</th>
<th>Detention per person per day</th>
<th>A2D per person per day</th>
<th>Saving per person per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>$339 AUD501, $124 AUD for ‘community detention’</td>
<td>$7 AUD502 – $39 AUD503</td>
<td>Between $333 AUD to $117 AUD</td>
</tr>
<tr>
<td>Canada: Toronto Bail Program</td>
<td>$179 CAD</td>
<td>$10–12 CAD</td>
<td>$167 CAD</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>$108 HKD</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>United States</td>
<td>$95 USD504</td>
<td>$22 USD505</td>
<td>$73 USD</td>
</tr>
</tbody>
</table>

Extract: UNHCR (2011)

13. These were crude estimates, but comparing costs of detention measures in Australia are notoriously difficult, with even the 2009 Parliamentary Inquiry into Immigration Detention alternatives unable to quantify (then) current costs, in part due to an ‘absence of detailed cost data that can be analysed.’21 However it did note some rough figures, which had been dramatically increasing. ‘In 1994–95 the average daily cost was $69, this figure rose to $105 in

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20 The potential savings were based on figures from 2005–06 and depended on assumptions about the particular form of mandatory detention (eg remote facility) or community detention, see: Alice Edwards, Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants UNHCR, Legal and Protection Policy Series, April 2011.

1995–96 and $111 in 2004’. By 2005–06 overall detention costs per day were $339, up from $243 in 2004–05.²² It also tabled some historical data:

**Table 4.1 Historical operating costs of immigration detention centres**

<table>
<thead>
<tr>
<th>Immigration Detention Centre</th>
<th>2004–05</th>
<th>2005–06</th>
<th>Average cost per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Villawood</td>
<td>$25 238 905</td>
<td>$13 763 131</td>
<td>$163</td>
</tr>
<tr>
<td>Maribyrnong</td>
<td>$7 497 437</td>
<td>$3 846 287</td>
<td>$314</td>
</tr>
<tr>
<td>Perth</td>
<td>$4 703 790</td>
<td>$3 456 244</td>
<td>$577</td>
</tr>
<tr>
<td>Christmas Island</td>
<td>$6 859 375</td>
<td>$2 605 339</td>
<td>$1,701</td>
</tr>
</tbody>
</table>

Source: Adapted from Department of Immigration and Citizenship, questions on notice, (51), Senate Hansard, Budget Estimates, Legal and Constitutional Affairs Committee, 13 February 2005.

Extract: Joint Standing Committee on Migration (2009), Report 2, p.117

14. Note the average cost per day of Christmas Island in 2005–06. This gives further credence to the possibility that current spending for Nauru and Manus Island could be at very least equivalent to, and feasibly more than double that.

More recently, during Senate Estimates hearings after the 2013 Budget, the Secretary of the Department, Martin Bowles suggested that:

I would say that in a broad sense – and again we need to understand the complexity – someone on a bridging visa might be about 20 per cent of the cost of someone in detention.

... There is not an additional 80 per cent of the cost, because we are not holding them in detention, which is a pretty expensive way to hold people. That is why we try and move them through.²³

²² Above, at p. 116.
This comparison was of an asylum seeker living in the community on a bridging visa against being held in detention. Like the UNHCR report, his comments suggested this comparison was between community based measures and Australian based detention onshore, not offshore camps.

This suggests that significant and ongoing cost savings could be found by shifting from a punitive approach through offshore detention camps, to onshore community based detention or similar alternatives.

15. There are also additional hidden costs arising from prolonged detention. For instance, detention centres were described by former Australian of the Year, Professor Patrick McGorry as ‘factories for producing mental illness and mental disorder.’ Although difficult to quantify costs, conservative modelling has suggested that ‘adverse experiences in extended detention could add some $25,000 to the average lifetime health costs for each successful asylum seeker.’ These mental health costs, represent 50 per cent more than average, and notably do not include costs for other related adverse impacts of detention, such as impaired ability to integrate into the broader community and engage in employment.

This is significant considering that historically between 70–97 per cent of asylum seekers arriving by boat have been granted refugee status, and many of them will either have to be resettled in Australia or Australia will largely be...


25 As noted by the Australian Parliamentary Library (February 2013) at: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/AsylumFacts#_Toc348096470
required to pay the costs of their resettlement in Nauru and PNG (see further on this below).

**Foreign Aid expenditure**

16. The Taskforce also continues to be very concerned at major cuts to foreign aid spending, including ongoing delays in lifting Australian aid support to 0.5 per cent of gross national income (GNI). The Coalition policy shift reduced projected aid spending by $4.5 billion over the forward estimates, reallocated to Australian infrastructure projects.\(^{26}\) The total aid budget for 2013–14 now represents just 0.37 per cent of Australia’s GNI.\(^{27}\)

This means Australia continues to lag behind other developed countries in our commitment to the Millennium Development Goals and foreign aid – Britain, for example, despite significant financial stress in recent years due to the Global Financial Crisis, reaffirmed its commitment to meeting a 0.7 per cent target for official development assistance (ODA) spending in 2013.\(^{28}\) Of equal and pressing concern is the use of aid funding to pay for asylum seeker policy and program implementation in Australia.\(^{29}\)


Not only are our current detention policies a gross waste of both human potential and financial resources, but Australia would be much better served by actively addressing people movement issues at the source.

17. People flee their homes because they have to; and they try to stay close to home so they can return if conditions improve. They move on from their initial place of displacement only because there is no hope of a safe life, with access to basic needs such as health care, shelter, education or employment in that location.30

Reducing the costs of detention via more humane strategies such as those outlined earlier in this document, and redirecting savings to more strategic humanitarian assistance programs in source countries, addresses asylum seeker issues at the source.31

Even a portion of these staggering amounts would support in-country access to housing, education, and a livelihood that must play an important role in reducing the desperate need to find a safe haven that drives asylum seekers to make dangerous journeys.

18. As the Lowy Institute summarised in its incoming brief to Government:

“If we have learned nothing else from the last few years, it is that this is a complex problem that defies easy solutions ...

People-smuggling is a transnational phenomenon that cannot be managed on a unilateral basis. Equally it is too

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insignificant an issue to risk jeopardizing economic or trade or other bilateral, regional, or global partnerships. Development assistance should aim for grander goals than reducing immigration or facilitating returns. Regional neighbours are potential trading partners, not just transit countries. Engage the international community to provide a roadmap rather than a roadblock. People-smuggling is a global scourge, and should not be an Australian obsession.32

19. With what is effectively a global epidemic of refugees in crisis, it is clear that no single country can address all the factors that drive people to flee their current circumstances. Durable solutions require regional cooperation on policy and processes, broad agreement on the principles underpinning the treatment of refugees and asylum seekers, and public education.

**Accounting for the risk of offshore processing**

The Taskforce recommends that the additional fiscal risks and potential liabilities posed by Australia’s running of offshore detention camps be recognised.

Australia has signed MOUs with both Nauru and Papua New Guinea in order to facilitate offshore processing. It is important to acknowledge the potentially serious liabilities and risks associated with these arrangements.

20. Our agreements commit us to bearing the **full cost of implementation**, including what is described in the

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Nauru MOU as ‘the development of enhanced capacity’. 33 Both MOUs note that where additional development of infrastructure or services is required to meet the purposes of offshore processing, ‘it is envisaged that there will be a broader benefit for communities’ in which transferees are initially placed. 34

In addition, we have continuing legal obligations to those sent ‘offshore’: that is, as UNHCR notes, ‘the physical transfer of asylum-seekers from Australia to Nauru, as an arrangement agreed by two 1951 Refugee Convention States, does not extinguish the legal responsibility of the transferring State (Australia) for the protection of the asylum-seekers affected by the arrangements’. 35 Further, the MOUs are explicit in identifying a continuing obligation for the ‘welfare and safety’ of transferees (PNG) and, for Nauru, agree that ‘The Participants will treat Transferees with dignity and respect and in accordance with relevant human rights standards’.

21. The Government is aware that these are significant commitments, with serious implications for the wellbeing of transferees, for our relationships with Nauru and PNG, and for Australia’s reputation internationally. Yet, in their 2013 reports on both facilities, the UNHCR was ‘deeply troubled

to observe that the current policies, operational approaches and harsh physical conditions at the Regional Processing Centre do not comply with international standards’.36 Nor were they reported to ‘provide safe and humane conditions of treatment in detention’ or ‘adequate and timely solutions for refugees’.37

There are clearly significant risks arising from our operating these offshore detention camps in uncertain political, social and economic environments. Nauru, for example, with its population of less than 10,000 and area the size of Rottnest Island, has a history of political instability, over-governance and mismanagement; of poor health, poverty and social dysfunction.38 The recent failure of rule of law, with the sacking of the country’s only magistrate, has thrown the Nauruan justice system into disarray, with many asylum seeker cases now in limbo without proper adjudicative authority.39

22. Papua New Guinea was ranked 144th on the 2013 Transparency International Index of Corruption, alongside

Iran and Nigeria. Manus has been the scene of violence between Papua New Guinea police and the military, endangering asylum seekers and Australian staff in an incident described in Immigration Department documents as ‘critical’.

The last Budget noted unquantifiable contingent liabilities where the Commonwealth agreed to liability limits for immigration detention services. This includes within Australia for International Health and Medical Services Pty Ltd (IHMS) and Serco; and at Regional Processing Centres, for The Salvation Army, IHMS, Transfield Services and G4S. In its MYEFO Statement of Risks the Commonwealth also recognises indemnity arrangements being put in place with each of the States and Territories for the ‘provision of various services (including health, education, corrections and policing services) to immigration detention facilities and people in immigration detention’.

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th>Women</th>
<th>Children</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Facility and APOD</td>
<td></td>
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<tr>
<td>(Onshore detention)</td>
<td>4107</td>
<td>987</td>
<td>1028</td>
<td>6122</td>
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<tr>
<td>Total Community under</td>
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<tr>
<td>Residence Determination</td>
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<tr>
<td>(Community based)</td>
<td>1035</td>
<td>673</td>
<td>1637</td>
<td>3345</td>
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<td>Total Community on Bridging</td>
<td></td>
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<tr>
<td>Visa E (Including people in a re-grant process)</td>
<td>18807</td>
<td>2136</td>
<td>1765</td>
<td>22708</td>
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</tbody>
</table>

42 Budget 2013–14 Paper 1, pp.8–22–23
43 MYEFO, Appendix C Statement of Risks p. 254.
23. As noted in the Budget Paper, ‘[f]iscal risks also include emergency foreign aid and potential natural disasters. Such occurrences have in the past resulted in unexpected increases in expenses and may do so again.’ Although the PEFO noted the regional agreements and that provision had been made for ‘processing facilities’ it also stated ‘further facilities could be required should arrivals persist at higher rates. There are also a number of expense measures which impact on the aggregates that still remain subject to the legislative process’.

In this respect Australia’s potential liabilities and risks arising from running offshore detention camps are arguably much greater than currently publicly acknowledged and accounted for. These could, for instance, include:

- Significant additional (unfunded) costs associated with ongoing resettlement and care in Nauru or PNG, arising from our MOU obligations.
- Additional potential liabilities and risks arising from governance and security concerns, with breakdowns of governance, or law and order, possibly in both locations.

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The Drownings’ Argument

- Potential litigation or other liabilities arising from impacts on Australian staff and personnel involved in both Operation Sovereign Borders and offshore processing facilities (which may not already be covered).
- Similarly consideration could be made to acknowledge the risks and for provision of claims arising from cases of human rights abuses and unlawful detention.46

24. In conclusion, we can’t afford these policies on a moral level – we believe that having children in detention will constitute the basis for our next National Sorry Day, and that our treatment of asylum seekers should be the subject of a Royal Commission. We also cannot afford it on an economic level – Australians deserve better stewardship of their tax dollar.

This paper is based on the Taskforce’s pre-budget submission, the full version of which can be found at www.acrt.com.au

About the author: Misha Coleman is the Executive Officer of the Australian Churches Refugee Taskforce. She was formerly the CEO of Anglican Overseas Aid and has extensive experience working in the regions from which people flee, seeking asylum and refuge, including Palestine, Ethiopia, Kenya, Vietnam and Cambodia.

46 On this final point, the UNHCR research report (2011), p. 40 noted that in ‘combination with the right to an effective remedy for human rights violations found in myriad human rights instruments, there is a specific guarantee of compensation in cases of unlawful or arbitrary detention’. As at March 2010, the Commonwealth had ‘paid out over $12 million in compensation for alleged injury or wrongful detention to individuals’. See http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Detention
Processing refugees: they get the hits, we get the myths

BEN SAUL

Offshore processing is a cruel method of dealing with asylum seekers. There are alternatives.

The violence on Manus Island has inflamed passions. For some, it is more evidence of a cruel and illegal failure to protect refugees. For others, it is an unfortunate collateral hiccup in the essential, hard slog of safeguarding our sovereignty.

Offshore processing still enjoys unshakeable bipartisan support, with only minor parties and civil society die-hards opposing it. Here I want to coolly ask if offshore processing is necessary to achieve the policy aims it is claimed to pursue, and whether its costs are proportionate or excessive.

Offshore processing is based on three premises: it is necessary to save lives at sea, prevent people smuggling, and not advantage ‘queue jumpers’. It is likely offshore processing deters many people from getting on boats, since they will not reach Australia or be resettled here, and will face protracted, harsh detention in PNG or Nauru with no certainty about resettlement or their safety. This in turn
Ben Saul

saves lives at sea, reduces demand for smuggling, and allows refugees to be resettled from elsewhere. On this basis, the government claims success.

None of this automatically means that offshore processing is necessary or proportionate. We might stop littering by shooting litterers, but that does not justify it if there are effective alternatives that carry lesser costs.

Offshore processing is not justified for a few key reasons. Less drastic means are available to save lives at sea and reduce smuggling. People get on boats from Indonesia because processing by the United Nations High Commissioner for Refugees there is excruciatingly slow and uncertain. Australia resettles very few refugees from Indonesia.

People would stop getting on boats and paying smugglers if we increased UNHCR’s capacity to process refugees within, say, three months, and guaranteed resettlement in six months. The numbers in Indonesia are modest. Economic migrants can be excluded and returned home. Australia already funds most of the UNHCR operation. Better resourcing it would be small change compared with the billions of dollars we spend on offshore processing, detention and naval interdiction.

Offshore processing is therefore unnecessary. But it is also excessive for other reasons. It is irrefutable that internment on Manus Island and Nauru involves grave human rights violations. Why else would the Abbott government preclude visits by the Australian Human Rights Commission?

Protracted detention of asylum seekers is illegal. People are not physically safe from violence. Conditions do not meet minimum international standards. The quality of processing is poor, risking return to persecution. Even children’s rights are at risk. The aim of saving life at sea does not justify severe violations of other human rights when alternatives are available.
Offshore processing also unlawfully punishes smuggling victims. And there are ethical questions about prohibiting smuggling when refugees cannot access protection any other way. Politicians have demonised smuggling as a cartoon-like evil. The real world beyond Canberra and talk-back radio is not so simple.

This leads to the related point that offshore processing is not justified to prevent ‘queue jumping’. The inescapable fact is there is no queue. There is no global or Australian list ranking all 11 million refugees worldwide by priority for protection or resettlement, whether based on need, waiting time or other criteria.

Australia has never tried to compare and rank the needs of each boat person against the needs of every other refugee worldwide. Australia is entirely absent from processes to resettle refugees from many countries. Who waits for a bus if you know it will never come? And if the boats are already stopping, why isn’t the Abbott Government resettling thousands more from refugee camps?

The queue is a myth. Governments have repeatedly told us the grandest of lies. What they are really saying is that they prefer to cherry-pick which refugees come. We should not kid ourselves that those choices reflect a fair prioritisation of the neediest refugees. Australia’s choices can be not fair at all, as when it prefers some nationalities over others, or sometimes refuses to resettle disabled refugees because it would be too expensive.

Offshore processing also shifts the burden of refugees from rich to poor countries, rather than sharing the burden among those with the most capacity. Our policy catastrophises and militarises a pedestrian challenge. The numbers of boat people have always been small, even at their peak. They are dwarfed by the epic influxes faced by Syria’s neighbours, or many African and Asian countries. We are becoming a humanitarian ‘wimp’.
Offshore processing is not justified. It is more about stopping the boats as an end itself. Our mania for orderly migration has contaminated attitudes towards inevitably unpredictable refugee flows. Disturbing political dynamics have produced shocking policy outcomes and damaged refugees.

Australia has to take the world as we find it, not how we wish it to be. If refugees come, and have no safe place, we should not refuse sanctuary based on unnecessary, excessive, wasteful, illegal and cruel political choices.

*Ben Saul is Professor of International Law at the University of Sydney.*
We can all help lift the refugee burden

JAMES HATHAWAY

First published in the Australian Financial Review
20 June 2009

Australia can take the lead to develop a system that offers refugees real protection.

Australia hosts about one-tenth of 1 per cent of the world’s refugee population. Of the nearly 14 million refugees around the world, Australia is home to only about 15,000 – not much for a country with one of the lowest population densities and the world’s 13th largest economy.

The overwhelming share of the responsibility to protect refugees is borne by the poorest countries. Roughly 90 per cent of the refugee population lives in desperately poor states. There is at least one refugee for every 100 citizens in Chad, Iran, Jordan, Lebanon, Sierra Leone, Syria and Tanzania. In contrast, Australia hosts about one refugee per 1,400 citizens, the European Union one refugee per 2,000 citizens. In Japan, the ratio is a shocking one refugee per 50,000 citizens.
James Hathaway

Given the clear mismatch between protection responsibilities and resources, it should come as no surprise that the circumstances of most refugees in less developed host countries are dire. In far too many cases, the abuse of human rights is rampant and rationalised on the basis of an extreme shortage of resources.

Of course, Australia and other wealthy countries do make some discretionary contributions, either directly or through the UN, to fund refugee protection in poorer states. But in rough terms, the UN has only about $1 per day to spend to look after each of the about 4.4 million refugees under its direct care.

Not even that tiny budget is guaranteed. Meanwhile, developed states spend roughly $20,000 to process and meet the needs of each of the tiny minority of refugees able to reach them.

But the solution is not just to send money. The usual practice of long-term detention of refugees pursued in many poorer states is in flagrant breach of the Refugee Convention and other human rights commitments. Yet it is increasingly funded by us under the guise of contributing to protection abroad. If the transfer of resources is to be meaningful, it must absolutely be based on verifiable respect for refugee law obligations in the recipient states. To date we seem content to throw money at the less developed world as a sop to our consciences for our minimalist direct protection efforts, even though we know that such resources do not dependably ensure refugee safety, autonomy and self-reliance.

The irony is that even though we know that there is rarely anything approaching real protection on offer in most refugees’ regions of origin, we persist in stigmatising those refugees who flee to Australia and other developed countries as less deserving than those who remain close to home.
Yet because we know that there is, in fact, no ‘protection’ worthy of the name being provided in most of the less developed world today, it is dishonest to stigmatise as ‘less needy’ those refugees who either have the resources, or who mortgage their future to smugglers, to seek protection in a place where they believe they will be treated fairly, where their children can learn, and where they are free to think and speak as they wish. Which one of us, confronted with the need to flee, would not make the same choice?

Australia could, and should, take the lead on getting governments to agree to a system of collective responsibility that would ensure that smugglers are not essential to a refugee’s ability to access real and durable protection. We could then pursue border control without fear of damning refugees (not just the smugglers) to ‘rot in hell’ (as Prime Minister Kevin Rudd famously suggested).

The gist of a revitalised refugee regime would be two-fold. On the financial (burden-sharing) side, a globalised system of common but differentiated responsibilities should encompass a major, binding, and practically enforceable obligation – not just rhetoric – to shift protection dollars to the places where most protection needs to be.

In terms of the human dimension (responsibility sharing), we should be open to different states taking on different kinds of responsibilities. Apart from a common duty of all states to provide first asylum, there is no reason to expect every country to play an identical refugee protection role. Some states would immediately provide permanent solutions to the acutely traumatised; most would provide protection for the duration of risk; and some states – logically including Australia – would provide permanent integration to the roughly 50 per cent of refugees still not able to return home after three to five years abroad.

Equally critical, the revamped system must include a mechanism to oversee the common, but differentiated,
James Hathaway

responsibility and resource transfer regimes. The approach on the ground must be rooted in the central importance of ensuring refugee autonomy and self-reliance, precisely in line with the rights regime established by the Refugee Convention.

In short, there is nothing wrong with refugee law. But there is a lot wrong (but that can be fixed) with the current atomised and unco-ordinated system for implementing our duties to refugees.

Professor James C. Hathaway is Dean and William Hearn Chair, University of Melbourne Law School. This is an edited extract from a speech he gave on Thursday for the UN International Day in Support of Victims of Torture.

This story was found at: http://www.theage.com.au/federal-politics/we-can-all-help-lift-the-refugee-burden-20090619-crba.html
Stopping the Boats – but at what cost?

PAMELA CURR
Asylum Seekers’ Resource Centre

Last year Italy experienced a double disaster when 368 Eritreans perished after their boat capsized within sight of Lampedusa, followed soon afterwards by the drowning of 232 Syrians as they tried to reach Europe. Their deaths sparked a public outcry in Italy and prompted the Italian government to launch a new rescue policy. A flotilla of five navy vessels, led by the San Giusto and crewed by more than 850 sailors, was formed and has since saved more than 10,000 people, including over 600 women and 1,000 children. In the past week the Italians have rescued at least 2,000 people on board more than a dozen overcrowded boats, with more on the way as the weather conditions are calm.

In contrast when Australia witnessed a tragedy from the shores of Christmas Island and under Labor’s watch when an estimated 1,100 people drowned, no new rescue policy was initiated. Successive coronial inquiries since 2001 have produced no recommendations which resulted in a lessening of the loss of life at sea.
The Government, Navy and Customs followed the same old procedures which failed so often. An opportunity to change the policy course of Australia was lost when the Expert Panel endorsed a Stop Asylum Seekers policy with offshore camps, boat disruption strategies, denial of family reunion and a mix of cruel punitive strategies. There were 340 submissions with over 86 per cent opposing offshore camps. These were ignored as was the recommendation to change the rescue sea boundaries which in effect remove rescue responsibility from Australia to Indonesia. There are many reasons why so many drowned at sea and Australia has chosen to ignore responsibility.

The Liberal Government now boasts that no one has arrived in 100 days. It is true that we did not think that the boats could be stopped by force alone. However we underestimated the capacity for this Australian government and supporters to create such harsh punitive conditions that even people fleeing persecution might hesitate. We did not foresee that the military would be armed against asylum seekers and that they would use force and submersible craft to deter arrivals. We overlooked that the government would introduce laws which allowed the military to act against unarmed civilians and not be held accountable for whatever they did to them. Lastly we underestimated the billions of dollars which an Australian government was prepared to strip from programs of lasting value to the people of this nation and to reallocate and spend this money to cause maximum harm to asylum seekers.

This government has stopped people arriving by boat seeking our protection, through a combination of terror and physical force. Terrorising asylum seekers has seen fewer people willing to try to come and physical force to remove those who do come has stopped them landing. There is less loss of life by drowning at sea but gross cruelty has been employed to force people to be compliant in the
face of brute force. But most of all we have harmed human beings. People died in the Indonesian jungle. The Navy refused to search for people who fell overboard in our waters off Darwin and people have been bashed, had their hands burnt and treated in a way that would be against the law if they were able to seek legal protection. Australia is now persecuting the persecuted.

Our forces have been engaged in cruel and brutal tactics diminishing their own self-respect and that of the nation. The government passed laws making them immune from prosecution, but this will not save them from the misery of knowing what they have done to vulnerable men, women and children at the government’s behest. Australia’s relationship with Indonesia is in tatters and our Pacific neighbours now view us as a fat cash cow bully.

The Prime Minister and his Minister may be cock-a-hoop with their ‘100 days – no boats’ slogan, but what is the cost to the nation’s soul? We could have saved lives with far less damage to the social fabric of our country. Remember this was the original stated purpose of the brutal off shore and rendition policies of successive governments. Italy and Europe have chosen a humanitarian path, Australia with far less to fear has chosen an extreme military model making war on asylum seekers.

Australia is using the argument that cruelty is necessary to save lives in the same way that America said that it was necessary to obliterate Vietnamese villages in order to save them. History will judge us harshly and we will deserve it.
Ms PARKE (Fremantle) (16:49): I take this opportunity, before the parliament rises for a significant period, to make some comments on the asylum seeker issue. It is no great secret that I have not rejoiced in policies that were put in place on a bipartisan basis by the former government in relation to offshore processing – policies that have now been continued, expanded and made many times worse by the current government.

I accept that many parliamentarians on all sides have been motivated by a desire to reduce deaths at sea, but if we are really concerned about people taking dangerous boat journeys why then are we punishing people when they have already made the journey and survived it, instead of working to prevent it happening in the first place?
Prevention would involve such measures as significantly increasing our humanitarian intake, working with other countries in the region to make conditions safer in transit countries and speeding up the processing of claims. It also means maintaining sufficient levels of foreign aid to address the root causes and improve conditions and the rule of law in the places from which people are escaping.

Pure deterrence can never be a solution, unless we seek to become as vicious and cowardly as the harm from which people are fleeing. And when we do, like Oscar Wilde’s Dorian Gray, succeed in our program and start to look as ugly as we act, does anyone stop to think about what happens to the people who are so deterred from taking those boat journeys to Australia, or who are towed back to Indonesia on an orange lifeboat? 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. Through the tow back actions – illegal under international law – we also further imperil our formerly close relationship with Indonesia and our reputation.

What of the people caught in existential limbo on Manus and Nauru – places where Australia has made independent oversight near impossible, where those countries are barring any examination of human rights, where asylum claims are not being processed and where people have been killed, injured or driven by despair, fear and hopelessness to riots or suicide? It is not okay. This is not what the Australian community understood at the time those centres were re-established on Manus and Nauru, when parliamentarians solemnly promised to ensure that the Convention Relating
to the Status of Refugees and international human rights would be respected, and that there would be independent oversight of offshore processing centres, especially in relation to the physical and mental health of detainees. Australia cannot contract out its obligations under international law to poor neighbouring countries. We have a responsibility to ensure the convention is complied with in respect of the people who have claimed asylum, even where these claims are being processed in a third country.

This is patently not happening. Clearly the conditions under which Labor undertook offshore processing when in government are no longer being complied with, and as a nation we are in violation of our international legal obligations. In my view, either the protections required as preconditions to offshore processing must be restored or put in place, or the centres on Manus and Nauru cannot be supported and must be shut down.

And what of those people in detention on Christmas Island and on mainland Australia, whose rights to legal representation, of appeal and support are being stripped away; whose children are not receiving appropriate education, as we have seen from reports of Christmas Island; and those refugees who are facing indefinite detention because of a negative security assessment from ASIO, a situation described this week by Sydney University’s Professor of International Law Ben Saul in The New York Times as ‘Australia’s Guantanamo’.

It is as if we have gone back in time to an Australia that was proud to be white and that put up countless legal, administrative and social obstacles for outsiders to come here, but much of that shameful past can be attributed to ignorance and to its time. What is our excuse now? This prosperous, educated, outwardlooking Australia that prides itself on the fair go, on tolerance and egalitarianism, and on mateship – mateship for whom? Those exactly
like us? As we gaze Thursday, 27 March 2014 HOUSE OF REPRESENTATIVES 85 CHAMBER at this beautiful portrait of ourselves, let us endeavour to be that Australia and not be consumed by the darker side of human nature or, just as wrongly, avert our eyes so that we do not see any unpleasantness. We cannot hide behind the notion that we are being cruel to be kind, that we are saving people from themselves or that we know best – actually, we do not.

As someone who has lived and worked in places afflicted by war and oppression, I am aware of how remote Australia is from the factors that are driving millions of desperate people worldwide to leave everything they know and to seek refuge. That is why it is incumbent on those in leadership positions to present all the facts and to seek to inform rather than politicise this issue. As in the past with the Vietnamese refugees, we need benevolent bipartisanship and a genuinely regional burden-sharing approach. (Time expired)

*Melissa Parke is the Federal Member for Fremantle and former Minister for International Development.*
Why I’m calling for an end to offshore detention

ANNA BURKE MP
First published in theguardian.com, 26 February 2014

The proof is in the numbers: Australia is not being swamped by asylum seekers. Now is the time to put politics aside and work together to prevent more deaths.

I do not support, nor have I ever supported the offshore detention and processing of asylum seekers and a few days ago I posted the following on my Facebook page:

I am extremely saddened and gravely concerned by the reports of violence and death emanating from Australia’s detention facility at Manus Island. There is no moral virtue in abdicating our responsibilities to asylum seekers by contracting out their detention to other nations – sadly, this has been a failure of both major parties. Not only does there need to be a thorough and public investigation into this incident, the transfer of asylum seekers to offshore facilities should immediately cease.

Yes, we need to find an answer to people risking their lives at sea – an estimated 1,100 lives were lost over the past six years (and those may perhaps be just the tip of the iceberg), but I have always remained skeptical that offshore
detention actually works – and reports yesterday of another bright orange lifeboat being towed back to Indonesia underlines the concern that our chosen deterrent may not be the answer. It’s also important to note that Minister Scott Morrison is very carefully choosing his words when he says that no asylum seeker has reached Australia in the past 64 days – he does not mention the fact that they have not stopped trying.

Reza Barati, a 23-year-old Iranian asylum seeker, risked his life on the perilous seas to secure a better, safer life for himself in Australia. Instead of receiving understanding, compassion and succor from a signatory to the refugee convention, he was sent to a hell-hole as a deterrent against the trip he had already made.

His torturous journey for a safer life has led to no life. He will eventually be returned in a body bag to his family in Iran. Yet both sides of politics still see this as an answer to lives lost at sea. Reza was fleeing a country heavily sanctioned by Australia, and that we strongly recommend against travelling to because of ongoing regional tensions.

Article 14 of the Universal Declaration of Human Rights clearly states that ‘everyone has the right to seek and to enjoy in other countries asylum from persecution.’ Yet for some reason Australia, feels it is immune to allowing refugees to our shores – unless they get in the imaginary queue somewhere and come the ‘right way’.

Let’s be absolutely clear about this: Australia does not have, nor have we ever had, a crisis on our borders. We are not being swamped by asylum seekers and we never have been. The proof of this is in the numbers. The UNHCR’s 2012 annual trend report demonstrates that the vast majority of people seeking refuge from conflict choose to remain in their region of origin, fleeing to neighbouring countries. In 2012 24,800 Syrians fleeing conflict made asylum claims to industrialised countries, compared to
more than 1.1 million registered Syrian refugees currently in neighbouring countries.

The UNHCR stresses that old and new conflicts – including those in Syria, Afghanistan, Iraq and Somalia – contributed to an 8 per cent increase in asylum applications in industrialised countries during 2012 (a fact not featured much in Australia’s refugee debate). In all, 479,300 claims were registered across the 44 countries, which the report states is the highest annual total since 2003, continuing a trend of increases evident in every year but one, since 2006.

Around the world most asylum claims are lodged in Europe, the US and Canada, with the majority of these in Europe. Last year, Australia received just 3 per cent of the world’s asylum seekers and the total number of refugees accepted by Australia makes up less than 7 per cent of all migrants accepted. The UNHCR states that by comparison, asylum levels in Australia continue to remain below those recorded by many other industrialised and industrialised countries.

I was a proud member of the previous Labor Government and despite my vocal disappointment with Labor’s policy in this area, its one saving grace was the significant increase to Australia’s refugee intake to 20,000 places – the largest increase to Australia’s humanitarian intake in 30 years – including taking thousands of Afghan refugees out of the Middle East and surrounding countries, such as Pakistan. Had Labor retained government our humanitarian intake would have increased further to 27,000. The increase was to target those in most need, including those vulnerable people in camps and in dangerous situations.

In contrast, Tony Abbott has reduced humanitarian places to around 13,000 and reintroduced a form of temporary protection visas, which history has shown only leads to more people desperately attempting to re-unite with their families by boat.
Anna Burke MP

This is not an easy area of policy debate and there isn’t an easy solution. I am also going to disappoint by not calling for Morrison’s head – a man who is quick to judge, careless and accurately summed up by many as arrogant. But I am reiterating Labor’s call for a full inquiry into this incident, I am calling for the ending of offshore detention, and I am praising the Australian public for showing compassion to a young man who has lost his life whilst in our protection. It’s well past time that parliament followed suit.

We need the debate about asylum seekers to be based on fact and not hysteria. Now is the time to put politics aside and work together to prevent more deaths.

Anna Burke is the Federal Member for Chisholm and former Speaker of the House of Representatives.
Dying to get here

MARG HUTTON

A short reflection on the use and misuse of the tragedy of death in policy debates about asylum seekers.

As I write this, my son is safe at last. After several days at risk on the other side of the world, with no money, no phone, no accommodation and lost luggage, he is finally settled in a hotel near the airport and will soon fly home. These last few days have been an agony of worry for his three mothers.

Even a 25-year-old offspring pulls a mother’s heart strings when in need – we are programmed to care. Now that the crisis has been resolved, we have recovered our emotional equanimity and can look forward to welcoming him home from the great adventure of his first overseas trip. Not so the mother of Reza Barati.

Reza was another young man in his early 20s, in peril and half way around the world from his mother. Reza had committed no crime, but after arriving in Australia by boat he was detained indefinitely on Manus Island and violently...
murdered. My anxiety in the last few days is infinitesimal compared to what Reza’s mother must have endured, and what she will continue to endure for the rest of her days.

How must Reza’s mother have felt on learning that her son, her baby, her first born, her hope for the future, had been brutally murdered – that his head had been stoved in – while in Australia’s care? How must she feel now? As I write this, 10 weeks have passed since Reza’s murder and no-one has been arrested or charged, despite first-hand accounts from other asylum seekers who witnessed the attack and identified the perpetrators.

Many Australians share a mother’s pain at the death of her son on Manus Island. But both major parties now maintain that mandatory offshore detention is an essential component of a policy to prevent deaths at sea. And some suggest that those who protest the cruelty of offshore detention are ignoring the tragedy of drownings resulting from failed people smuggling voyages. But it is not either-or.

The brutal murder of a young man in our care on Manus Island is horrific. So too are the estimated 1,560 drownings of asylum seekers en route to Australia over the last 15 years – especially in light of clear evidence that Australia’s actions and inactions contributed to a number of mass drowning incidents.

Over recent years, Australia’s actions have involved disruption activities in Indonesia, burning boats on arrival – ensuring only the worst boats are used – and every now

47 Some claim Reza Barati was an ‘economic refugee’. In my view this is irrelevant. He died before his asylum claim could be assessed and was at the time of his death residing in Australia’s offshore asylum seeker processing centre on Manus Island where we were responsible for his well being and owed him a duty of care.

48 For the number of asylum seekers who have drowned en route to Australia see Marg Hutton, ‘Drownings on the public record of people attempting to enter Australia irregularly by boat since 1998’ (updated 2 February 2014) online at: http://sievx.com/articles/background/DrowningsTable.pdf
and then, failure to rescue sinking asylum seeker boats in a timely manner. There would undoubtedly have been many more drownings if it wasn’t for the heroic efforts of the Australian Navy in rescuing asylum seekers. But paradoxically, several of the mass drowning incidents could have been averted if Australia had acted promptly and not chosen to assume the distress calls from asylum boats were trickery. The best examples of these delayed rescues are Kaniva (SIEV 358) in June 2012 and AUSSAR 2013/3821 almost exactly a year later.

Australia’s hard line policy on asylum seekers is supposedly driven by compassion. By turning back boats to Indonesia, or incarcerating passengers in our gulags on Nauru and Manus Island, we are purportedly saving the lives of potential asylum seekers by discouraging them from taking dangerous sea voyages.

But if we were really trying to save lives we would take swift action and do everything in our power to respond to boats in distress. And if we had real compassion for those who drown on the high seas, then we would take every step to recover their bodies and investigate the causes.


Compare, for example, the massive Australian-led effort to locate wreckage from Malaysian Airlines flight MH370, with the late and reluctant search and rescue effort mounted for the asylum boat known as AUSSAR 2013/3821 in June 2013. During the search for the asylum seeker boat, not even one body was recovered despite sightings of more than a dozen corpses floating in the ocean.\textsuperscript{51}

Nearly 25,000 people have died in road accidents in Australia since 1998,\textsuperscript{52} far more than the estimated 1,560 asylum seekers who have drowned attempting to enter Australia by boat in the same period.\textsuperscript{53} Yet when it comes to driving on our roads, Australians are permitted to make an informed decision about the risks of a car crash compared with the benefits of enjoying road travel, without being jailed for travelling in motor vehicles. Asylum seekers, by contrast, are denied the right to weigh the risks of travelling to Australia by boat against the benefits of finding a life free from persecution.

Both the ALP and the Coalition use weasel words of compassion for those who die at sea to justify their hard line against those who arrive. We say we are declaring war on people smugglers but it is always the asylum seekers who suffer. It’s like fighting drink driving by arresting the passengers – deeply illogical and cruel.

It is apparent that the so-called war on people smuggling is really a war on people who arrive by boat seeking asylum. Only one people smuggler has ever been extradited directly from Indonesia to face charges in Australia. If we were really sincere in our efforts to stop the scourge of smuggling we would find ways to put the smugglers out of business that didn’t destroy the lives of asylum seekers. Manus

\textsuperscript{51} Ibid.
\textsuperscript{52} ‘List of motor vehicle deaths in Australia by year’, Wikipedia, downloaded 29 April 2014 at: http://en.wikipedia.org/wiki/List_of_motor_vehicle_deaths_in_Australia_by_year
\textsuperscript{53} For drownings figures see Marg Hutton, op. cit.
Island would be better used to detain people smugglers than innocent people seeking asylum in our country.

Reza Barati survived the dangerous sea voyage from Indonesia to Christmas Island. But he arrived just days after Kevin Rudd introduced the Pacific Solution Mark II, declaring that no asylum seekers arriving by boat would ever be settled in Australia. As Richard Ackland has observed, we are now ‘swap[ping] deaths at sea for annihilation on land’.\(^5\)

While our son jets back to this country to continue his studies, and his mothers thank our lucky stars, another bright, talented, university-educated young man, who wanted to make a contribution to this country is dead and a mother grieves.

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Marg Hutton is the owner of sievx.com and compiles and publishes data on asylum seeker drownings at sea and boats pushed back to Indonesia. She tweets as @MargHutton

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Tony Abbott has kept his pre-election promise to stop the boats, but at what huge cost! Let me count the ways.

1. Violation of international law and human rights law obligations

*International maritime law* – It is illegal to stop boats in international waters and then forcibly to transport these boats or their passengers through international waters without their informed consent. It is not unreasonable to define such actions, which violate the right of innocent maritime passage, as piracy or even as people trafficking. Yet Operation Sovereign Borders (OSB) is doing this.

*Refugee Conventions* – It is illegal under the Refugee Conventions which Australia has signed, forcibly to return to Indonesia passengers in boats that have entered Australian territorial waters, and there requested consideration of their claims to be admitted as refugees under the Conventions. Every forced towback or escort out of Australian waters gravely transgresses our obligations under the Conventions. Yet OSB is doing this.
2. Offending Indonesia
It is diplomatically offensive to our important near neighbour Indonesia either to abandon boatloads of returned asylum seekers at the outer edge of Indonesian territorial waters, or to violate Indonesian sovereignty by trespassing in their territorial waters without prior permission. OSB is doing both these things.

In the latter case, OSB has confounded the offence by an insincere ‘apology’ that claimed falsely that our Navy ships made ‘positional errors’ in Indonesia’s complex archipelagic waters: a lie so readily refuted by commonsense logic and seamanship as to be grossly insulting to Indonesia.

There was a thorough discussion of the impact of such acts on Australian-Indonesian relations by an Indonesian academic on the ABC 7.30 Report on 22 January. I will return to this point later in this article.

3. Human rights violations
OSB has violated Australia’s human rights obligations to asylum seekers in various reported ways: by lying to them and tricking them as to where they were being taken; by various reported acts of abuse and cruelty during interceptions and forced returns; and by leaving them in life-at-risk situations without due care when abandoning them either within or at the outer edge of Indonesian territorial waters.

Again, Immigration Minister Scott Morrison has insulted Indonesia, by claiming that multiple Indonesian police reports of such acts of Australian cruelty are not to be given credence.

The reported decision by Senator Eric Abetz, the Government’s leader in the Senate, to grant OSB personnel immunity from prosecution for any acts done in the course of their border protection duties as state agents is offensive and almost certainly illegal. It violates the spirit of accepted
international norms governing crimes against humanity. Under Abetz’s ruling, the Nuremberg Trials would have been impossible.

4. Adverse impacts on Navy and Customs service morale and professional standards

The Government’s general secrecy and arrogance are setting a poor example to our service personnel engaged in OSB duties, and encouraging a general debasement of service standards. The free expression on the internet of Navy prejudice against asylum seekers – one hopes these are isolated views – has already happened.

This is a punitive climate that makes such reported acts of abuse as forcing asylum seekers to hold onto hot engine pipes quite possible. Although we await the results of the Indonesian investigation, Morrison has not categorically denied these claims: he has only said that they are ‘unsubstantiated’.

Cost and benefit

To my mind, all of this adds up to a rather heavy bill to pay for the Government’s claimed success in deterring boats. Reportedly, it is now weeks since any asylum seekers arrived in Australia. This, of course, takes the pressure of numbers off detention facilities in Christmas Island, Nauru and Manus. Morrison is understandably trumpeting the Government’s success in these terms.

Another success – to which I attach the most weight – is that under the Abbott Government there have been no reported deaths at sea involving Australian border protection interception action or failure to act. This is a striking improvement on the high death rate under the Rudd and Gillard Governments. By Marg Hutton’s authoritative analysis on www.sievx.com, over 1,100 people probably
died under Labor. This is certainly restraining Labor’s criticisms of OSB: both Bill Shorten and Richard Marles have been very circumspect so far.

My explanation for those ‘accidental’ border violations by OSB ships: I am sure that Morrison has given OSB the strictest riding instructions that there are to be no avoidable deaths of asylum seekers for which Australia might be held to account. If this has required OSB ships deliberately to trespass in Indonesian waters to take boats safely close to shore in Indonesia, and then to lie about it, so be it.

If I am right in this logic, it will happen again.

Risky realities
In summary, the Abbott Government is walking a very fine line – and accruing heavy legal, diplomatic and ethical costs – in implementing its pre-election pledge to turn back the boats. What can go wrong now with this ruthless, fanatical, but successful (in its own terms) policy? I see two main risks.

First, risk of deaths at sea. Any asylum-seeker deaths brought about directly or indirectly by present Australian aggressive towback policies will force Indonesia to take the most forceful action against Australian interests, because Indonesia’s international diplomatic standing will then be at stake.

Second, navy-to-navy incidents. Now that Indonesia has ordered its own navy into the territorial waters south of Indonesia to which Australia has been returning asylum seekers, it is not hard to visualise scenarios of ugly navy-to-navy confrontations in those waters.

In either case, damage to Australia-Indonesia relations and to Australia’s global standing could be severe.

Tony Kevin was a career foreign service officer for 30 years and a member of the Senior Executive Service of the Australian Public Service from 1986 to 1998.
The news from Manus Island is dreadful. We know that at least one asylum seeker has died as a result of injuries sustained in disturbances over the past three days. Many asylum seekers have been wounded, some seriously, in reported gunshot, club or knife wounds.

There is still much we do not know. We do not know if these deaths and injuries were sustained within the perimeter wire, i.e. on Australian-administered camp territory, or outside the wire, i.e. on PNG sovereign territory. We do not know if asylum seekers had voluntarily left the Australian-run compound, or demonstrated (or rioted) within it; we do not know if the compound was then invaded by angry or out-of-control PNG police or security forces, and if asylum seekers then fled the compound trying to escape attacks by armed men.

There is the official story so far, as told by Scott Morrison, and the unofficial counter-story as told by Ian Rintoul of the Sydney Refugee Action Coalition, based on many telephoned reports by detainees. They are very different stories.
There are two official enquiries announced so far: an Australian Immigration Department enquiry, and a PNG Government enquiry. Labor has called for an independent enquiry. Labor should therefore support Gillian Triggs (Director of the Australian Human Rights Commission) in her reasonable call for access to the site and to witnesses, to enable her to prepare a thorough independent enquiry. If the two governments have nothing to hide, they should promptly grant Triggs’ request for access.

Whatever story or stories emerge as to how the violence and deaths happened, there is the underlying basic question; did the Australian Government violate its duty of care, by sending to a detention centre in a poorly-policed foreign country people who had arrived in Australian waters and made asylum claims there under the Refugee Conventions? Many decent Australians would contend that it did.

Whatever bad things have happened at Curtin, Woomera, Baxter, Maribynong and Villawood detention centres, these places were or are subject to Australian law and public accountability safeguards. The truth usually eventually comes out. Manus is not, or very imperfectly. Cover-up of atrocity is a lot easier in Manus than it would be in an Australian detention centre.

And this of course is what was intended. Manus is part of the asylum-seeker deterrent system. The fear of death at sea, and the fear of death by security force brutalisation at Manus, are intended to deter asylum-seeker voyages. To stop the boats.

And, awkwardly, this was Labor’s view too, when it reopened Manus late in its final term of government. And this is why Labor is impotent now to do more than call for the facts of what happened. It cannot evade policy responsibility for Manus being in operation.

Tanya Plibersek is reported to have said words to the effect that a few deaths or injuries in riots at Manus is
better than hundreds of drowning at sea. Well yes, but wrong comparison. First, because Labor’s record of asylum seeker deaths at sea in 2009–2013 is far greater than since the Coalition regained power, and more than double the death toll under Howard. Second, because asylum seeker deaths at sea haven’t been inevitable, but are usually the result of negligent or dilatory Australian agency responses to known distress situations.

Labor’s problem – and we see it again in its first responses to the awful news from Manus – is that it is neither principled enough nor brutal enough. It suffers from conflicting objectives: in government it wanted to deter, but to stay within the law and decency as far as possible. So it sent mixed policy messages to the Border Protection Command, ADF, and Australian Maritime Safety Authority.

Like Henry II with his troublesome priest Thomas A’Becket, it wanted its officials to deal firmly with the mounting asylum seeker inflow, but not in ways that Australia could be held to account for violations of law or rescue failures. It sent conflicting signals to officials. It tried ineffectually to cover up rescue failures that should never have happened, if it had made clear its determination to apply correct rescue-at-sea protocols.

The Coalition’s message is brutal and clear: we will stop the boats. To do this we will break international maritime and refugee laws, jeopardise Australia’s relations with Indonesia, and stand at arm’s length and watch as major avoidable violence and human rights abuses take place in PNG. Because all this bad stuff reinforces the deterrent message we are utterly determined to keep sending.

And so far, it is working.

Tony Kevin is a former Australian Ambassador to Cambodia and Poland and author of several books including Reluctant Rescuers.
Regional Protection, Family Reunion and Asylum Seeker Policies

KATE JEFFERY

Perhaps the most powerful and effecting moment in Jessie Taylor and David Schmidt’s award winning documentary, *Between The Devil and The Deep Blue Sea*,\(^{55}\) comes before the credits, with an update on the fate of many of the ‘boat people’ interviewed for the film. The palpable sense of shock and dismay that so many, into whose lives we have briefly entered, are listed as ‘Missing’ or ‘Drowned at Sea’. Elsewhere journalist Paul Toohey describes harrowing scenes of grief stricken, despairing survivors, mourning the loss of family and friends, after an overloaded boat sank off the coast near Cidaun, Indonesia, in July 2013.\(^{56}\)

Christmas Islanders continue to be haunted by a succession of boat sinkings, including the SEIV-221, which was dashed against rocks in Flying Cove on 15 December 2010, as islanders stood helplessly onshore, unable to affect a rescue of the terrified men, women and children

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\(^{55}\) *Between the Devil and the Deep Blue Sea*. 2011 Liquid Creations. See website www.deepblueseafilm.com

floundering in the high seas.\textsuperscript{57} Marg Hutton estimates that around 1,560 people have drowned on boats attempting to reach Australia between December 1998 and December 2013, including some 1,100 between 2009 and 2013.\textsuperscript{58}

There is no doubt the rising toll of deaths at sea has galvanised some politicians into supporting extreme policies that they would otherwise oppose in order to prevent further drownings. Likewise, journalist and academic, Robert Manne, expresses the view that towbacks and offshore processing are a necessary compromise to avoid loss of life at sea. Writing in the \textit{Guardian Australia}, Manne is critical of refugee and asylum seeker supporters for what he sees as a failure to accept the consequences of dismantling offshore processing under the Rudd Government. This saw the return of the boats ‘in accelerating numbers’ and increased numbers of drownings. While decrying the ‘extraordinary and often irreparable psychological and spiritual damage’ caused to ‘tens of thousands of people’, the vast majority ‘genuine refugees’, he nevertheless views opposition to offshore processing and towback of boats as part of ‘the ineffectual and sometimes misguided humanitarianism of the left’. Refugee advocates, he believes, need to accept that the hardline, anti-asylum seeker policies of reinstating offshore processing, turning back of boats and indefinite mandatory detention have wide support within a generally hostile community and most importantly, have been effective in stopping the boats.\textsuperscript{59}

\textsuperscript{57} Graphically captured on youtube. See \url{http://www.youtube.com/watch?v=5YBdQ0ftzOQ} 50 people were confirmed as drowned.

\textsuperscript{58} See \url{sievx.com Drownings Table} \url{http://sievx.com/articles/background/DrowningsTable.pdf} Confirmed drownings and probable drownings.

\textsuperscript{59} Manne, R (2014) ‘On Refugees both left and right are wrong. The solution: compromise’, \textit{theguardian.com}, Wednesday 12 March 2014. \url{http://www.theguardian.com/commentisfree/2014/mar/12/on-refugees-both-the-left-and-the-right-are-wrong-the-solution-compromise}
The Drownings’ Argument

No refugee advocate accepts, implicitly or otherwise, loss of life at sea. However, what most emphatically reject is the idea that somehow it needs to be this way. That other approaches more consistent with humanitarian principles and respect for the Refugee Convention cannot be adopted by politicians showing genuine leadership. In particular, advocates (including human rights organisations and church social justice groups) question the current policy settings that actively contribute to people getting on boats. There has been a consistent failure by governments to more thoroughly analyse, and publicly acknowledge, the multidimensional nature of ‘push’ and ‘pull’ factors that influence forced migration and in particular, decisions to risk a perilous sea journey to Australia.

As the Brigidine Asylum Seekers Project pointed out in their submission to the Expert Panel on Asylum Seekers (set up by the Gillard Government in June 2012 to make recommendations on ways to stop ‘dangerous journeys by boat’), it is ‘... impossible to save people from drowning on these trips unless we address the issues that made them get on boats in the first place’. This includes the absence of genuine resettlement pathways from within the region and continuing restrictions on refugee family reunion.

A comprehensive regional protection framework developed in cooperation with countries in the region (Indonesia in particular) has been consistently promoted as a way of addressing what is essentially a regional problem with irregular migration, in parallel with an increase in Australia’s humanitarian intake. This necessarily involves strengthening of the UNHCR presence to facilitate timely processing of claims and a commitment to increased resettlement by Australia.\(^{60}\) Paul Toohey in his Quarterly

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Kate Jeffery

Essay asserts that ‘any hope for a genuine regional solution’ rests with Indonesia. Arguably, this has never been attempted in any meaningful way by an Australian Government.61

Deteriorating relations between Australia and Indonesia as a result of unilateral turning back of boats and incursions into Indonesian territorial waters makes any negotiated regional protection framework unlikely at present. But nevertheless, real cooperation with Indonesia, which after all, hosts vastly greater numbers of refugees including internally displaced people than Australia, offers the best hope of ensuring people in need of protection have realistic pathways for resettlement. People interviewed for Jessie Taylor’s film consistently said they would wait if there were alternatives.

It is no coincidence that increased numbers of people getting on boats occurred during a period where very few people were being resettled directly from Indonesia or Malaysia. Resettling in the order of 50 people a year from Indonesia does not constitute viable or reasonable alternatives.

The lack of legal pathways to resettlement makes a mockery of the so-called ‘no advantage’ test supported by the Expert Panel on Asylum Seekers. Much of the damaging rhetoric around asylum seekers consistently asserts that those coming by boat are ‘queue jumpers’. Australia has an annual quota, not a queue. If there is no queue, as such, and resettlement is a lottery for the many people on the move throughout the world, any wonder that people take what limited opportunities they have to change their status in life. However, a comprehensive resettlement scheme involving Indonesia would allow people to wait without taking further risks with their lives at the mercy of ruthless people smugglers. It would also allow consistent processing

61 Toohey, 2014. See The Mislaid Indonesian Solution, pp. 68–78
of claims which would separate out those in need of protection from those with a primary desire to better their life chances. And it would be an act of good faith towards Indonesia, demonstrating Australia’s willingness to burden share. In turn, Australia would be likely to encounter greater cooperation in prosecuting people smuggling.

Attempts to develop regional processing to date have been fundamentally flawed. Proposals involving East Timor (rejected outright by the government of Xanana Gusmao) and Malaysia (invalidated by the High Court) were conditional upon the host countries accepting return of arrived asylum seekers from Australia. Such proposals were driven primarily by domestic political imperatives (stopping the boats) and were essentially punitive in nature. There is an urgent need to go back to first principles and establish how a genuine regional protection framework should be configured, not one predetermined by insular Australian political agendas.

Restrictions on refugee family reunion continue to be largely ignored as a factor in boat arrivals. Denial of family reunion for temporary protection visa (TPV) holders was infamously used by the Howard Government as part of deterrence strategies for ‘unauthorised’ arrivals. The effect was counterproductive: far from acting as a deterrent, the prohibition led to an increase in numbers of separated family members – women and children with a husband or father already in Australia – amongst those arriving by boat.\(^6^2\)

Unfortunately the Expert Panel on Asylum Seekers paid little heed to this history. In attempting to address a backlog of applications for family reunion for refugees living in

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Australia settled via the offshore UNHCR program, the Panel recommended the reintroduction of heavy restrictions on family reunion for people arriving by boat, by limiting access to visas used to sponsor family members. The Panel noted that of the then 20,100 outstanding applications for the Special Humanitarian Program (the main proxy for refugee family reunion), approximately 16,300 were for the immediate family members of ‘onshore’ protection visa holders. Over 90 per cent of these applicants had travelled to Australia in ‘an irregular manner’. These applications for sponsorship were now to be given lowest priority for family reunion.

Furthermore, anyone arriving after 13 August 2012 was no longer eligible to apply to sponsor a family member under the SHP. Recent changes by the Abbott Government have imposed further restrictions by limiting the eligibility of unaccompanied minors to sponsor immediate family.

The recommendations by the Panel took no account of the real pent-up demand for family reunion under the SHP, which has a rejection rate of over 90 per cent of all applications.63 Eligibility criteria are also highly restrictive, excluding, for example, extended family and non-related dependents. As Susan Metcalfe has pointed out, ‘many more don’t bother applying at all when the likelihood of acceptance is so low, and without other options, relatives are regularly choosing to risk dangerous boat trips. In a country where governments talk incessantly about the importance of family and family values, the lack of good policy in this area is shameful’.64

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While the Panel acknowledged the risk of limited practical opportunity for family reunion ‘becoming a significant factor motivating those who choose irregular migration by boat to Australia’, they chose to ignore this risk in relation to ‘boat people’. Implementation of recommendations further restricting family reunion has achieved precisely that effect. Pamela Curr from the Asylum Seeker Resource Centre writes of an immediate change in the composition of boat arrivals, as whole families now embarked on sea journeys. Faced with indefinite separation from loved ones, all were now taking the risk.

It can be argued that essentially, the Panel misunderstood the fraught history of refugee family reunion. In 1996 the Howard Government chose to numerically link the quota for the Special Humanitarian Program component of the annual refugee and humanitarian program with the number of protection visas granted ‘onshore’ to asylum seekers. Every place granted to an asylum seeker was deducted from the number of places available for family reunion.

This policy very deliberately set up competition for places between refugees resettled through the offshore humanitarian program seeking to be reunited with immediate family members still overseas, and asylum seekers now living in the Australian community. It has allowed politicians to pit refugee against refugee, in order to label asylum seekers as ‘queue jumpers’. It is morally repugnant. Long gone were the days of compassionate

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67 Policy papers detailing changes by the Howard Government leaked to the Sydney Morning Herald referred to ‘presentational measures’. When questioned on this by Kerry O’Brien, then Minister Phillip Ruddock took the opportunity to question the bona fides of people who claimed asylum as against those ‘languishing in the worst situations in the world’. See ABC 730 Report transcript of interview 3 July 1996.
Special Assistance Categories aimed at facilitating refugee family reunion (abolished by the Howard Government in 1997). Rising numbers of asylum seekers drastically reduced available places, leading to considerable tension within communities. In early 2012, only 149 visas were available for SHP sponsorship in the annual quota as a result of this link. In total, 714 SHP visas were issued in 2011–12 and only 503 in 2012–13.

Former Immigration Minister Chris Bowen exploited the link between the onshore and offshore refugee quotas to question the legitimacy of asylum seekers. Referring to constituents in his western Sydney electorate, he claimed that refugees waiting indefinitely for family reunification ‘are often the strongest advocates for policies to discourage boat arrivals’. Disingenuously he made no mention that the policy instrument responsible for this situation could be changed if he saw fit. Instead, it served conveniently as rhetoric to demonise asylum seekers, setting ‘good’ refugees against ‘bad’ refugees, in effect adding to the growing divisions between refugee groups increasingly being observed by agencies such as the Refugee Council of Australia.

Refugee advocates have long campaigned for the removal of this link, unique amongst resettlement countries. Years of prolonged family separation significantly undermine family functioning, and cause ‘profound psychological, economic and social impacts’ which impair the capacity of refugees to successfully settle in Australia.

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69 Bowen, C (2011), “We can give hope to people who could never dare to dream”, Sydney Morning Herald, 1 December 2011.
family reunion have been repeatedly recommended as an outcome of annual consultations by the Refugee Council of Australia.\(^7\) In times past, refugee family reunion was primarily catered for through the family stream of the general migration program (this changed under the Howard Government). With the introduction of a two period of assurance (another Howard Government change) and other cost imposts, such sponsorship has long been unaffordable for people only recently themselves refugees. Changes to family reunion must genuinely address the wider issues of unmet need under the SHP, including the very narrow definition of family and ‘split family’ provisions.

**What Needs to Happen**

- Family reunion for refugees should not be treated as wholly a ‘humanitarian’ issue and should be addressed through wider immigration planning.
- A preferential family category should be established as part of the general migration program to allow for affordable and timely refugee family reunion, but without the systemic issues and high costs that currently severely limit access under the family stream.
- Special Assistance Categories should be reintroduced to facilitate family reunion for refugees from particular countries, particularly for those family groupings that have experienced indefinite separation.
- Greater recognition needs to be given to the level of unmet demand and need for family reunion, which goes well beyond the backlog of applications for SHP visas. The highly restricted eligibility criteria

and high refusal rate obscure the level of real need for family reunion.

- Contrary to the claims of the Expert Panel on Asylum Seekers, there are strong arguments under international human rights law for recognition of a right to family reunion. The importance of family is frequently asserted as a policy objective but is largely absent in migration planning.

- Family reunion should not be linked to strategies for exclusion of asylum seekers. The issue of refugee protection for asylum seekers is entirely a separate issue to family reunion.

- The extent to which prolonged family separation has acted as an incentive for irregular migration needs to be thoroughly examined.

- The impacts of competition for places between refugees seeking to reunite with separated family members and refugees granted onshore protection (set up by the linking policy) should be considered, given strong anecdotal evidence this is contributing to tensions within communities in Australia.

- The social costs and benefits of family unity need to be asserted and taken into account in immigration planning. This includes the benefits of intact family groups to more rapid integration into the workforce and reduced healthcare costs due to lower levels of anxiety arising from prolonged separation. The social dimensions of immigration are currently being downplayed by comparison with assumed costs and benefits to the economy of people with particular labour force characteristics.

- Much greater emphasis needs to be placed on education and training to fast track refugees and
humanitarian entrants into the workforce, through targeted programs.

- Consideration needs to be given to facilitating access to the skilled streams in the general migration program for people who are refugees.
- Definition of family needs to be broadened to allow for kinship relationships to ensure all dependent family members are eligible for resettlement.

Changes announced by the Coalition as part of the recent Federal budget purport to remove the numerical link but are cosmetic at best. Reserving 4,000 places for people sponsored under the SHP in the annual refugee and humanitarian program will help alleviate pressures for some families resettled through the offshore refugee program, but will do little to address the real level of need. The numerical link has only disappeared because the onshore protection program is now to be capped at 2,750. In other words, durable solutions will not be found for the many thousands of people already living in our community once that cap is reached. Asylum seekers and refugees on bridging visas will continue to be denied any hope of reuniting with separated family. Children, young people, parents, partners and other family members face almost lifelong separation under these policies.

Continued denial of family reunion for bridging visa holders will have the same impact as for TPVs: people will come by boats.

‘If there is no way we can reunite with our family, we have little choice but to help our family come by boat.’

Kate Jeffery is a community planning consultant.

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Summary and Conclusions

Members of Labor for Refugees are deeply concerned with the quality of present political and public debate on asylum seeker and refugee policy. As Julian Burnside has stated in his essay: ‘Let’s be very clear about this: every death at sea is a tragedy. No-one wants to see refugees die in their attempt to escape persecution, but the often-recited concern about refugees drowning is just hypocritical propaganda’.

We want to see the abolition of the current regime of cruel and inhumane measures. Instead, we want to see Government implementing initiatives that make us proud to be Australian. We want high quality policies and programs that acknowledge the humanity of all the people affected, give protection to those with legitimate claims, provide honest and ethical leadership to strengthen Australian democracy, fulfil our international obligations and are cost effective in their use of resources.

John Menadue, in a recent essay on his blog Pearls and Irritations,73 properly describes the current state of the political and public debate around asylum seekers and refugees as a quagmire. He poses the question ‘Is there a way through the present impasse that is both humane and practicable?’ and suggests that those seeking a way out of

73 http://johnmenadue.com/blog/?p=1304
Summary and Conclusions

this stalemate should work to broaden the discussion and to identify a basis for building a degree of bi-partisanship amongst our policy makers.

The contributors to this publication share the concerns voiced by Menadue and, like him, have nominated a number of areas that deserve greater attention so that the debate can move forward and lead to policies and programs that are both humane and practicable.

The democratic deficit of the current debate

In a recent article on The Drum, John Keane, Professor of Politics at the University of Sydney74 speaks of the Faustian bargain that Australian democracy has regularly struck up with what he aptly calls concentration camps. He notes that, if we look back over Australian history we are confronted with numerous examples of groups of people deprived of their liberty and treated with dreadful punishments because of their supposed threat to our way of life.

Too often, public discussion on asylum seekers creates much heat but little light. Keane points to how quickly the debate degenerates into a sharp divide where supporters of asylum seekers can feel intimidated by the virulence and aggression of their opponents.

Associate Professor Anne Pederson of Murdoch University and Dr Lisa Hartley of Curtin University have sought to answer what underlies the public prejudice towards asylum seekers. Their research points to a coexistence of prejudice or negative sentiment with a willingness to accept myths or inaccurate information, an aggressive nationalism and a disproportionate confidence in the level of support for such views.

While we have many brave advocates willing to speak out against the horrific treatment of asylum seekers, we are

74 http://www.abc.net.au/news/thedrum/john-keane/2744796
shocked by the lack of politicians with the courage to stand up consistently to challenge fellow members of parliament and ask for another way. This publication contains contributions by two – Anna Burke and Melissa Parke – who have defied the official position of their parliamentary caucus at considerable risk to their own careers.

An emotionally charged debate

Researchers Anne Pedersen and Lisa Hartley have shown there exist strong links between a person’s attitudes about asylum seekers and his or her emotions. They note that people with positive attitudes towards asylum seekers are more likely to empathise with their situation, to feel moral outrage and to express disgust and embarrassment at Australia’s policy stance. Those holding prejudiced views are however, more likely to feel threatened and angry.

The highly charged emotional atmosphere of the debate may well reflect some of the deepest insecurities of Australia as a nation. These could include our feelings of isolation (the tyranny of distance); the need to exercise control as exemplified in John Howard’s catchcry ‘We will decide who comes to this country and the circumstances in which they come’; the fear of the other as demonstrated by the White Australia Policy and more recent racial outbursts; and our dependence on big and powerful friends in international affairs. In a nation with a perverse pride in our so-called larrikinism, we are in fact a very law abiding lot and often very sensitive to what we see as breaking the rules.

The level of emotion surrounding asylum seeker policy frequently demolishes any prospect for calm and sensible discussion of this complex and difficult topic. And yet there are positive examples of how this emotion can be diffused or directed towards greater understanding and empathy. The successful integration of refugees into local communities
such as Nhill, Shepparton or Young is a badge of pride for these communities.

**Building a smokescreen**

Current and previous governments have used secrecy, lies, deceit and false propositions to justify cruel and punitive measures to deter asylum seekers from coming to Australia by boat. The high minded rhetoric that these measures will save lives merely acts as a smokescreen to disguise the real reasons behind these policies. By depicting this as a war to protect Australia’s sovereignty from a dangerous invader and by using military personnel, equipment and tactics to prosecute action, the Coalition Government has sought to exploit panic and fear to build greater acceptance of its particular vision for Australia’s future.

The hypocrisy of the argument that asylum seekers represent a threat to Australia’s sovereignty is quickly apparent when we consider the much greater threat represented by provisions in the Trans Pacific Partnership that Australia is so eager to negotiate with several other nations in this region including the United States and its willingness to include investor state dispute settlement mechanisms.

The Coalition Government’s claim that it has ‘stopped the boats’ with offshore processing, transfer to Manus or Nauru and refusal to allow resettlement in Australia is illegitimate. While these measures may have succeeded temporarily in turning back the boats, they have done nothing to reduce the demand amongst asylum seekers for refuge. As several of the authors contributing to this publication have pointed out, if we truly wanted to stop the boats there are several alternatives which would produce a much more effective solution, be less damaging to the affected people, be cheaper to implement and operate and would not involve the flouting international law.
As Tony Kevin notes ‘... all of this (violation of international law, offence to Indonesia, human rights violations and adverse impacts on Navy and Customs service morale and professional standards) adds up to a rather heavy bill to pay for the Government’s claimed success in deterring boats’.

More appropriate policy measures

The search for policies which find a way around the present impasse and are both humane and practicable must continue. The global flow of asylum seekers fleeing from dysfunctional, disintegrating or failed states will persist well into the future as people continue to seek protection from the threats of persecution, torture and death that they face in their home countries.

Australia, however receives only a small proportion of this flow because of its isolation and geographical position. The UNHCR, in its annual publication Global Trends75 and in the statistics it collects for the group of 44 industrialised countries,76 confirms the observation by Anna Burke that Australia does not have, nor ever has had, a crisis on our borders from asylum seekers.

This point is picked up by James Hathaway who comments: ‘Australia hosts about one-tenth of 1 per cent of the world’s refugee population. Of the nearly 14 million refugees around the world, Australia is home to only about 15,000 — not much for a country with one of the lowest population densities and the world’s 13th largest economy’.

The UNHCR also provides evidence regarding the fluctuations in flow year on year, the implication being that the changing levels of global unrest are a much more

75 http://unhcr.org/globaltrendsjune2013/UNHCR%20GLOBAL%20TRENDS%202012_V08_web.pdf
76 http://www.unhcr.org/5329b15a9.html
important push factor than the pull of the policies in a specific country. This question is very ably discussed in a publication by Harriet Spinks of the Parliamentary Library.77

Australia must recognise that this is a global problem that no one country can solve alone. It must work together with other countries especially those in our region to find a robust, durable and humane response. As one of the wealthiest countries on the planet, we have a duty to contribute to finding a solution in proportion to our good fortune.

Central to the search for better quality policies is the recognition that no person chooses to be a refugee. It is usually only under great duress and much reluctance that a person chooses to flee his or her home country. The pressures leading to such a decision are so far beyond the experience of most Australians; we can never claim to have any understanding of the person’s decision unless we are willing to sit and listen to their story with empathy, compassion and acceptance.

The contributors to this publication have nominated a number of issues that deserve greater and more immediate attention in this search for more appropriate and better policy responses. Several are briefly discussed below.

Regional Cooperation
The Indonesian Foreign Minister, Marty Natalegawa recently put the case for regional cooperation succinctly. ‘For Indonesia, the message is crystal clear: the cross border and complex nature of irregular movements of persons defies national solutions … There is no other recourse but to take a comprehensive and coordinated approach … a

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sense of burden sharing and common responsibility should be the basis for our cooperation’.

Regional cooperation could take a number of forms and be pursued in different ways. The concept of burden sharing and common responsibility is taken up by Professor Hathaway. He has proposed the establishment of a mechanism to implement and monitor this sharing.

This concept could also be progressed using an existing regional agency. One possibility is that associated with the Bali Process. The Bali Process is an agreement that was developed in 2002 with more than 45 member countries in the Asian region and international organisations plus observers. It meets to raise regional awareness of the consequences of people smuggling, trafficking in persons and related transnational crime, and to develop and implement strategies and practical cooperation.

Julian Burnside advocates that Australia establish a processing centre in Indonesia to process the claims of people seeking refuge in Australia. By processing refugee claims in Indonesia, and increasing our refugee intake, he believes we would create a system for safe, orderly resettlement. The model developed under the Orderly Departure Agreement that Australia established with Vietnam 1983 could apply. This approach enabled 100,000 Vietnamese to come to Australia in a safe and orderly way without risking their lives at sea.

Kate Jeffery argues that the development of a comprehensive regional protection framework would address the current absence of genuine resettlement pathways. This would require a strengthening of the UNHCR’s presence in the region and a commitment by Australia to increase resettlement.
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Greater support for the work of the UNHCR

The Office of the United Nations High Commissioner for Refugees was established in 1950 to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Since its establishment, it has helped tens of millions of people; it currently has a staff of around 8,600 in more than 125 countries and assists some 33.9 million persons. A really useful summary of the work of the UNHCR is contained in the synthesis the agency has made available on its website of its publication*State of the world’s refugees: in search of solidarity*.78

In an agreement between the Australian Government and the UNHCR signed in 2013, Australia endeavoured to provide an annual financial contribution to the agency’s budget totalling $93 million in the four years to 2016. In addition, Australia endeavoured to provide core funding for programs to counter sexual and gender based violence to the value of $12 million over the four years. Due to the consolidation of figures in the Government’s 2014–15 Budget, it is not possible to identify whether this endeavour has been fulfilled and to what extent.

In his contribution, Professor Saul suggests that ‘People would stop getting on boats and paying smugglers if we increased UNHCR’s capacity to process refugees within, say, three months, and guaranteed resettlement in six months. … Better resourcing (of the UNHCR operation in Indonesia) would be small change compared with the billions of dollars we spend on offshore processing, detention and naval interdiction’.

Misha Coleman roughly estimates that expenditure on offshore detention runs to at least $A1.3 million per person per financial year.

78 http://www.unhcr.org/4fc5ceca9.html
Increasing the Humanitarian Intake
Several authors have raised the potential for raising Australia’s intake of refugees under its Humanitarian Program to relieve pressure on people caught indefinitely in refugee camps in Indonesia. Amongst other things, the Humanitarian Program offers permanent visas to refugees who in most cases have been identified and referred by UNHCR to Australia for resettlement or are applicants under the Special Humanitarian Program (SHP) supported by a proposer who is an Australian citizen, permanent resident or eligible New Zealand citizen, or an organisation that is based in Australia.

In its 2014 Budget, the Abbott Government reintroduced a limit of 13,750 places for the Humanitarian Program. This comprises 11,000 places for offshore applications including 4,000 under SHP and 2,750 places for onshore applications. As Kate Jeffery discusses, the apparent removal of the numerical link between the two program elements will do little to address the real level of need for both family reunion and resolution of asylum claims because of the imposition of caps.

Family reunion is an issue that Kate addresses as both a significant incentive and an important constituent of good policy. She believes that it should be considered more broadly as part of immigration planning and not treated just as a humanitarian issue. She recommends a range of measures to recognise the level of demand and to allow for affordable and timely reunion.

Addressing persecution and discrimination in source countries
Melissa Parke points to the need to maintain sufficient levels of foreign aid to address the root causes and improve conditions and the rule of law in the places from
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which people are escaping. This idea is also picked up by Misha Coleman who reports that the ACRT (Australian Churches Refugee Taskforce) is concerned at major cuts to foreign aid spending and that Australia lags behind other developed countries in our commitment to the Millennium Development Goals and foreign aid.