

Protecting Australia and Protecting the Australian Way Labor's Policy on Asylum Seekers and Refugees

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Foreword

The number one priority of the Australian Government is to protect Australia. Labor has a proud record of doing so and will always put protecting Australia first.

Labor will protect Australia's borders with a \$600 million Australian Coastguard, a cop on the beat 24 hours a day, seven days a week.

This policy paper details five new important steps Labor will take to better protect Australia.

1. Labor will introduce a US style Green Card to crack down on illegal workers and ensure they are not stealing Australian jobs and undermining the pay and conditions of Australians.
2. Labor will smash onshore and offshore people smuggling rings through tougher policing including stationing more Australian Federal Police (AFP) officers in Indonesia.
3. Labor will impose harsher penalties, including million dollar fines, for people smugglers.
4. Labor will focus on eradicating people trafficking for the purposes of sexual or other exploitation, as well as people smuggling.
5. Labor will better protect our airports and seaports.

Labor understands the concerns of Australians and shares their view that unauthorised boat arrivals are the worst of all possible outcomes both from Australia's point of view, as a nation managing its borders, and from the point of view of the asylum seekers who risk, and sometimes lose, their lives. Australians rightly want a managed and fair system.

Labor will seek to protect Australia from future boat arrivals and create a fairer world wide refugee system by having the world adopt one processing system for refugee claims. If there was one world wide processing system this would be the ultimate deterrent to people smuggling and boat arrivals. Why pay a people smuggler and risk your life to get to a developed nation if, when you get there, you have no better chance of your claim being accepted? One system is also the only way of ensuring fairness so that the most disadvantaged waiting in refugee camps have the same chance of having their claim accepted as an asylum seeker who arrives in a developed country.

Advocating a new world wide system is a bold step. To lead the world requires leading by example and, in this policy, Labor outlines the following five ways in which it will.

1. Labor will maintain the excision of Christmas Island in order to pilot the processing regime it will advocate should be adopted globally. Christmas Island will be the prime asylum seeker processing and detention facility.
2. Labor will put its processing regime to the ultimate test by monitoring the return of failed asylum seekers.
3. Labor will increase funding to the United Nations High Commissioner for Refugees (UNHCR) to \$25 million per annum in order to better assist those who live and too often die in refugee camps overseas.
4. Labor will boost aid to address the issues that cause people to move such as poverty, natural disasters, conflict and environmental degradation.
5. Labor will increase aid to countries of first asylum. Such aid is desperately needed and is important to facilitate the development of a system of return of asylum seekers.

The Australian Labor Party stands for fairness and compassion and the Australian people share these values. A unique part of what it is to be Australian will be lost if this nation does not nurture and protect the Australian way of treating people fairly and with compassion.

Mandatory detention as administered by Howard Government has degenerated into a system of punishment. It is no wonder that many Australians are deeply uneasy that children are behind razor wire and people are being detained on Pacific islands. Many Australians are worried that treating anyone this way is not the Australian way.

Labor will keep mandatory detention for the proper purposes of protecting Australia from health and security risks and to ensure refugee claims can be dealt with efficiently and failed claimants removed. Under Labor the system of mandatory detention will be humane, not a system of punishment.

Labor will end the 'Pacific Solution', the processing and detaining of asylum seekers on Pacific islands because it is costly, unsustainable and wrong as a matter of principle.

Labor has already announced that it will free children from behind the razor wire, close Woomera, return detention centre management to the public sector, and lift the shroud of secrecy around detention centres through media access and the involvement of independent medical professionals.

In this policy, Labor outlines the following five additional ways it will ensure mandatory detention treats people in an Australian way.

1. Labor will run a fast, fair and transparent processing regime on Christmas Island and on mainland Australia that determines 90% of refugee claims in 90 days. Genuine refugees will be quickly identified and released while failed claimants will be quickly returned.
2. Labor will administer better health and ASIO security checks.
3. Those with claims of merit who are ASIO security cleared, health cleared and who pose no risks will be able to live in hostel style accommodation. Christmas Island will have a supervised hostel. Any other supervised hostels required will only be located in regional communities that bid to have one.
4. Labor will create an independent Inspector-General of Detention, who will monitor detention conditions and resolve complaints.
5. Labor will have an expert committee which will review and make recommendations on any case in which a person is detained for more than 90 days.

Labor will also treat genuine refugees in an Australian way. Genuine refugees will be able to access settlement services like English language training and the Job Network.

There are refugees in Australia who, under current laws, may be here a lifetime but will never be eligible for family reunion. Labor will not maintain such a system. Labor will replace this system with a short term temporary protection visa after which a genuine refugee can access a permanent protection visa.

Labor will facilitate genuine refugees settling in parts of Australia where they will be welcomed and are needed. Regional communities that want to increase their population through having refugees settle will be able to do so through Labor's regional settlement plan and will receive targeted resources to assist them in doing so.

Labor has devised this policy with Australia's national interest as its guiding principle. Labor's policy will protect Australia and protect the Australian way. We commend it to you.

The Hon Simon Crean, MP
Leader of the Opposition

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Shadow Minister for Population and Immigration

Labor's new policy

Protecting Australia and Protecting the Australian Way

Labor recognises that community support for immigration with a strong humanitarian component depends on Australians judging the refugee program to be managed and fair.

A Crean Labor Government will lead debate internationally while taking the following positive steps to protect Australia and protect the Australian way.

Protecting Australia

An Australian Coastguard – a 24 hour a day, 7 day a week cop on the beat

Labor will protect Australia's borders through its Coastguard. Labor will establish an Australian Coastguard, built around four principles: better capability, specialist personnel, a volunteer effort and making the best use of intelligence.

The Australian Coastguard will have new, purpose-built ships, staffed by personnel trained and specialised in the maritime border protection role. Together with a nationwide team of Coastguard Volunteers and a Coastguard Volunteer Vessel program, they will form a National Coastguard Network.

Details of Labor's Australian Coastguard are contained in Labor Policy Paper 007.

A US style Green Card to crack down on illegal workers

The largest immigration challenge facing Australia is the more than 60,000 persons here illegally. More than a quarter of these people have been here for more than 10 years and 30,000 are working illegally.

The number of illegal workers is swelled by those who work in breach of visa conditions. In addition, there is mounting evidence that the subclass 456 business visa and the subclass 457 skilled visa are being misused to get overseas workers in to Australia who are then exploited. Disturbingly, organised rackets appear to be involved, not just individual employers.

This underground workforce enables unscrupulous employers to undermine Australian wages and conditions and reduces the number of jobs available for Australians. It also enables the exploitation of overseas workers, who have no real ability to complain.

Working Australians are entitled to have their jobs and wages and conditions protected from illegal and exploited foreign labour. For working Australians the problems caused by illegal workers is of greater day to day impact than the arrival of asylum seekers. The Howard Government is ignoring this problem because it does not want to have a fight with the employers who are profiting from the scams.

Labor will crack down on illegal workers by:

- Issuing a US style Green Card to non-citizens who have a visa which entitles them to work;

- Placing an obligation on employers to check Green Cards and prosecuting and harshly penalising those who employ illegal workers;
- Creating an illegal workers' round table involving the Federal Government, State Governments, employer representatives, including small business and farmers, and unions to design and implement the Green Card system and run the national crackdown; and
- Creating and resourcing an illegal workers' strike force within the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA).

Tougher policing and increased penalties for people smuggling

The lull in boat arrivals in Australia is largely due to the fall of the Taliban, which has significantly reduced the numbers of people on the move. It is also due to more active policing, particularly the stationing of AFP officers in Indonesia.

Labor will improve our coastal surveillance through the Coastguard. Labor will also increase the number of AFP officers in Indonesia in order to maximise Australia's ability to stop people smugglers and stop boat departures. Currently, there are only two officers stationed in Indonesia.

Labor will also review the effectiveness of the Canberra based AFP-DIMIA Strike Team, ensure it is adequately resourced and determine whether Strike Team resources should be re-located to Indonesia.

Labor will increase penalties for people smuggling, including 20-year gaol terms, million dollar fines and confiscation of boats and will work within our region to ensure people smuggling is a crime in every nation. Labor will also impose penalties on bogus tour operators who are engaged in on-shore people smuggling.

Protecting our air and sea ports

With Labor's Coastguard providing better coastal protection, airports and seaports may become the new target for people smugglers and unauthorised arrivals.

The Howard Government has been criticised by the Auditor-General in relation to its failure to adequately deal with airport security. Labor will address the criticisms of the Auditor-General and, across government, will strengthen intelligence collection and the quality of intelligence available at the operational level at airports.

Labor will also address security at seaports to prevent them becoming a new avenue into Australia through stowaways, people smuggled on board or crews jumping ship. Labor will support the International Maritime Organisation in the development of seafarer identification cards and other measures to ensure world-class maritime security.

Leading the world

One world wide processing system

Labor will seek to lead the world in finding new answers to the global issue posed by displaced people, asylum seekers and refugees. Currently, the global debate is focussed on dealing with the problem of secondary movement of asylum seekers from countries of first asylum. Asylum seekers move from countries of first asylum because there is inadequate care and protection for them in such countries, or they are unable to access processing for resettlement, or they believe that they will have a better chance of getting a resettlement place in a developed country by going there.

The problem of mass secondary people movement is jeopardising the future existence of the Refugee Convention and is compromising the ability of developed nations to manage their borders.

Labor will seek to resolve the global problem of secondary movement by having the world adopt one processing system for refugee claims. If there was one world wide processing system this would be the ultimate deterrence to people smuggling and forward movement. Why pay a people smuggler to get you to a developed nation if, when you get there, you have no better chance of your claim being accepted?

From a humanitarian and equity point of view, such a system also ensures that the most disadvantaged people waiting in refugee camps have exactly the same chance of being resettled as an asylum seeker who arrives in a developed country.

Clearly, this is a major change to the way in which the world's system for handling refugees currently works. However, major change is required. For the change to work, developed nations would need to better resource UNHCR to enable it to provide more solutions via repatriation, reintegration or resettlement for refugees. Developed nations would need to be prepared to resettle refugees with genuine claims and those nations which do not take refugees in this way would have to be prepared to pick up a fair share of the global burden.

The developed world would also have to be prepared to address the reasons people are forced to move, such as poverty, natural disaster and conflict, and better assist countries of first asylum so that people do not have to keep moving to receive reasonable care and protection.

Labor will lead by example. Labor will assist countries of first asylum with aid as part of a scheme of arrangements to facilitate return to such countries of secondary movers. Labor will increase general funding to UNHCR to \$25 million per annum to assist with better meeting humanitarian needs and access to processing in refugee camps worldwide. Labor will boost aid to source countries to address issues that cause people to move such as poverty and natural disasters.

International agreements with pipeline countries

While Labor is seeking to lead the international debate on a global solution, it will also focus on achieving positive change in our region.

Labor has in the past been able to develop comprehensive plans of action within our region to stop boat arrivals and facilitate returns. Labor will use a similar approach and build on the Bali summit process, particularly the initiatives to deter secondary movement.

People trafficking

People smuggling is an evil trade, and so is people trafficking. Around the world women and girls are trafficked for the purposes of prostitution or sexual slavery. Others in vulnerable positions can be trafficked and exploited as labourers.

The level of people trafficking into Australia does not appear to be high but one child or woman trafficked for the purposes of sexual exploitation is one too many.

To address the problem of people trafficking, Labor will broaden the role of the Ambassador for People Smuggling and mandate the Ambassador to work internationally to eradicate people trafficking.

Restoring community faith in the immigration program

A factual debate free from vilification

Unlike the Howard Government with its 'children overboard' conspiracy and continuous vilification of asylum seekers, Labor does not believe it is necessary to lie to protect our borders. Labor will engage in public debate that is factual and free from vilification.

Regions which want refugees

Labor aims to restore community faith in the immigration program and particularly the humanitarian program by reassuring Australia it is fair and being properly managed. In these more positive circumstances, Labor will consider increasing Australia's humanitarian program, which under the Howard Government has fallen from over 18% of our immigration program to just over 10%. This increase will be achieved within current immigration intake numbers.

However, Labor will only increase the humanitarian program to the extent that communities in regional Australia volunteer to have refugees resettled in their community. In offering to do so regional communities will be eligible for resources that would assist them to resettle refugees as part of their community. Any increased intake of refugees will be part of Labor's population dispersal policy designed to boost regional areas while taking the pressure off over-crowded places like the Sydney basin.

Asylum seekers in the community

While the Howard Government never talks about it, three-quarters of asylum seekers are not in detention, but are living peacefully in the community. All asylum seekers who arrive lawfully on visas and then make refugee claims are allowed to live in the community. Many Australians assist such asylum seekers voluntarily but the Howard Government never talks about their existence and largely throws the burden for their care on churches, charities, the Red Cross and the voluntary sector generally. The

Red Cross is funded under the asylum seeker assistance program, established by Labor, but changes in recent years have made it less effective. Labor will consult charities, churches and the Red Cross to find a way of lifting the burden off them and getting appropriate arrangements for asylum seekers in the community.

In wilfully ignoring the existence of these asylum seekers, the Howard Government has also engaged in a number of policy failures in relation to their treatment, including ensuring proper, timely security checks and the removal from Australia of asylum seekers whose claims have failed. Labor will remedy these Howard Government policy failures.

Fast, fair and transparent processing

Removing incentives to arrive by boat

The Howard Government's 'Pacific Solution' has cost more than half a billion dollars to date and is budgeted to cost more than half a billion more in the next four years.

Despite wasting more than a billion dollars and despite the Howard Government's claims that none of these asylum seekers will set foot on Australian soil, 312 have already been resettled in Australia with more on the way. The Howard Government now says that the only reason for the 'Pacific Solution' is to prevent asylum seekers from gaining access to the more favourable processing system in Australia.

The 'Pacific Solution' is not just costly, it is a short term ad hoc strategy. Does anyone really believe Australia will be detaining asylum seekers on Nauru in 10, 20 or 50 years?

Labor will create a long term solution by dealing head-on with the processing issue the Government is indirectly addressing through its costly and unsustainable 'Pacific Solution'. Labor will streamline the Australian processing regime to make it the same as that applying in refugee camps and will remove the reason for asylum seekers to risk their lives journeying to Australia in leaky boats.

Christmas Island

A Labor Government will designate the Christmas Island facility as the prime asylum seeker processing and detention facility. Christmas Island, Ashmore Reef and Cocos (Keeling) Islands are in the excised zone and Labor will maintain these excisions given the proximity to the Indonesian mainland.

Labor supports the Christmas Island community being treated with respect and having real responsibilities in the governance of their community. Labor will work in a co-operative way with the community and ensure that it has a real say in all matters relating to the asylum seeker processing and detention facility. Labor will ensure the community enjoys the employment, training and economic benefits associated with the facility. Labor will monitor the facility's ongoing social, economic and environmental impacts.

On Christmas Island, Labor will process the refugee claims of asylum seekers in the same way such claims are processed in overseas refugee camps. This approach achieves equity between the refugees processed in overseas refugee camps and those who arrive unauthorised. Such processing will deter unauthorised arrivals

because there is no incentive to come to Australia in leaky boats only to hit the same processing regime.

An expert committee, to be known as the Asylum Seeker Claims Processing Review Committee, will oversight the development and functioning of the processing regime.

The processing will be fast, fair and transparent, determining 90% of cases in 90 days.

Those found to be genuine refugees will be settled in Australia and those whose claims fail will be returned quickly.

Labor will also fund appropriate non-government agencies to provide case workers to work with asylum seekers to explain the process being undertaken and to manage expectations. Overseas evidence suggests that case worker support makes managing processing and detention issues easier, and facilitates achieving effective return arrangements in the case of a negative decision.

Asylum seekers found not to be refugees will be quickly sent back.

On the Australian mainland

For asylum seekers who arrive on the mainland by air or through the ports or otherwise, Labor will run a fast, fair and transparent processing system where 90% of claims will be determined within 90 days.

The Howard Government runs a three stage processing system, in which the community has no say. In addition DIMIA is not forced to process cases quickly and to make quality decisions.

Labor will speed processing by introducing a new two stage process, in which DIMIA is forced to get claims processed quickly and properly. Labor will abolish the Refugee Review Tribunal and give Australians a say in the determination of refugee claims by having a three person Refugee Status Determination Tribunal, with one legally qualified member and two members drawn from the community.

Appeals under Labor's streamlined processing system will be strictly limited to one appeal by leave on points of law. There will only be one appeal from the RSDT decision and that would be to the Federal Magistrates Service in relation to errors of law by leave. Leave to hear the appeal will only be granted if, in the opinion of the Court, the asylum seeker has done everything reasonably in his/her power to prepare for removal if the appeal is unsuccessful.

An asylum seeker will only be able to appeal a negative Tribunal decision if he or she has fully co-operated and is ready to be removed from Australia if the appeal fails.

Asylum seekers found not to be refugees will be quickly sent back.

A Labor Government will also introduce new rules designed to discourage lawyers and migration agents acting on a fee or reward basis from encouraging applicants to make frivolous appeals. Asylum seekers on the mainland will also have case workers.

Manifestly unfounded claims

Under Labor's new laws refugee claims which are manifestly unfounded will be placed on a special expedited decision making track by the Tribunal and disposed of quickly.

Under the Howard Government's system, people from countries like Canada and Sweden have made refugee claims and these claims have taken almost a year to resolve. Labor's system will dispose of such manifestly unfounded claims within a week.

Compelling humanitarian claims to stay

Under the Howard Government's system an asylum seeker whose claim has been rejected may apply to the Minister for Immigration to be allowed to stay on the basis their case raises unique or exceptional circumstances.

Currently, there is no transparency about how Ministerial discretion is used and there have been allegations in the past of political bias in its exercise.

Labor will make the process transparent and ensure independent expert advice is obtained. Labor will refer each claim to the Asylum Seeker Claims Processing Review Committee for advice and will publish any recommendations by the Committee that an asylum seeker's case raises unique or exceptional circumstances.

Monitoring returnees

The ultimate test of a processing system is whether it works, so that Australia helps those who have a genuine need and Australia returns overseas those who have no claim to stay and who do not face persecution or potential human rights violations.

Labor is prepared to put its processing system to the ultimate test by working through our embassies overseas and through appropriate NGOs such as the Red Cross to monitor returned failed asylum seekers.

Mandatory Detention to stay but be made humane

Administrative mandatory detention not punitive detention

Labor introduced mandatory detention. It did so to ensure that Australia was protected from any health and security risks, to enable claims to be processed as quickly as possible and to ensure failed claimants could be removed from Australia. Mandatory detention was a part of dealing properly and quickly with refugee claims.

Under the Howard Government, the detention system has degenerated into a system of punishment. Indeed, Australian courts are now starting to order the release of individual detainees because the Howard Government has crossed the line from proper administrative detention to punitive detention.

Labor will keep mandatory detention for the proper purposes of protecting Australia from health and security risks and to ensure refugee claims can be dealt with efficiently and failed claimants removed. Under Labor the system of mandatory detention will be humane, not a system of punishment.

The following commitments have already been made by Labor and will be implemented by Labor:

- Children will be removed from behind the razor wire;
- Woomera will be closed;
- Management of detention centres will be returned to the public sector;
- Health services in detention centres will be provided by independent medical professionals who will be free to speak out on issues; and
- Media access to detention centres will be permitted subject to agreed protocols.

Labor will also implement the following changes.

Better health checks

In May 2002, the Communicable Diseases Network of Australia set down national vaccination guidelines but the Howard Government does not comply with these guidelines in detention centres. The only reason given is cost.

Ensuring Australians are not exposed to communicable diseases and that disease does not spread through detention centres is too important for penny pinching. Labor will comply with the national vaccination guidelines.

Better security checks

For most of the term of the Howard Government, ASIO security checking was only begun on asylum seekers at the point DIMIA determined them to be a refugee. The system has been changed, but ASIO security checking still does not begin from the moment an asylum seeker arrives. These and DIMIA character checks can take time and as a result genuine refugees have been unnecessarily held in further detention.

Labor will implement a better system. Security and character checking will be done at the same time as claims processing. Even for those whose claims ultimately fail, it is important to our national security that we know what sort of risk, if any, they represent. For those with genuine claims, it will mean they are not detained longer than necessary.

Labor will ensure ASIO has sufficient resources to do quality security checks in a timely fashion and that DIMIA character checking is streamlined as part of the new, more efficient processing system.

Freeing the children

Under Labor any unaccompanied children under 14 will be placed in the care of foster families after health checking is completed. Unaccompanied youths between 14 and 18 will be released into appropriate community care arrangements following health checking.

A focus of community concern about the current system of detention has centred on the plight of unaccompanied children. Labor's new mandatory detention model addresses these issues.

However, concern has also been expressed about the contradiction inherent in the Minister for Immigration being the legal guardian of unaccompanied minors at the

same time as being the Minister responsible for their detention and processing of their claims.

Under Labor's new mandatory detention model such children will not be detained. But to avoid any perception of a conflict of interest or any political interference, Labor will make its proposed Children's Commissioner the legal guardian of unaccompanied children who arrive unauthorised.

Christmas Island processing and detention facility

As noted above, Labor will designate the Christmas Island facility as the prime asylum seeker processing and detention facility. By the time of the next election, Christmas Island will be home to the only large purpose built detention facility in Australia. Labor will modify it as necessary to meet the needs of family groups. Asylum seekers will be initially housed in that facility. As detailed below, asylum seekers with claims of merit and who present no risks will be allowed to move to supervised hostel accommodation. Such accommodation will be developed on Christmas Island.

As noted above, Labor will consult and work with the Christmas Island community to ensure that the community enjoys the economic benefits that flow from the detention centre and associated hostel accommodation.

Mainland Australia processing and detention facilities

Immigration detention facilities are needed for persons other than asylum seekers. For example, visa overstayers, visa breachers and criminal deportees are detained pending removal. Labor will detain these people in the Villawood, Maribyrnong and Perth detention facilities.

In the case of any asylum seekers who arrive unauthorised on mainland Australia by plane, by stowing away or in the case of any boats that evade detection, Baxter will be the principal detention facility. Port Hedland will also be kept in service if numbers require.

Detention models

Labor will operate two styles of detention facilities: high security detention and supervised hostels.

- ***High security detention***

Under Labor, high security detention will be used on initial arrival for unauthorised arrivals other than unaccompanied children.

Such persons will remain in high security detention for the purposes of health, identity and ASIO security checking and for the purposes of enabling one major interview to be conducted in relation to the merits of an asylum seeker's claim.

On the basis of that one major interview, an assessment will be made of whether the asylum seeker has a refugee claim of merit.

Those assessed as not having a claim of merit will be required to remain in high security detention. For family groups with children, such high security detention facilities will be based on the Alternate Detention Trial at Woomera and will consist of

a number of ordinary style homes, secured at the perimeter and with a 24 hour a day security presence.

Children resident in such high security detention facilities will be permitted to attend ordinary schools.

- ***Supervised hostels in regional communities which volunteer to host them***

Asylum seekers initially assessed as having a claim of merit and who have been security cleared by ASIO and passed health checks will be transferred to a supervised hostel. Such a hostel will be located on Christmas Island. If asylum seeker numbers are such that hostels are required on mainland Australia, any hostels required will be located in regional communities that have volunteered to host them.

A supervised hostel will be an open facility with unit style accommodation for asylum seekers. Some units will be appropriate for family groups and others for single asylum seekers.

Labor will ensure that the jobs and economic activity created by the supervised hostel will benefit the local community.

In assessing appropriate regional locations for supervised hostels, Labor will endeavour to identify areas with labour shortages, particularly shortages of agricultural labour and the like.

Asylum seekers will be permitted to leave the supervised hostel during the day but will be required not to leave before a specified time in the morning and to return by a specified time in the evening. There will be supervisors at the hostel at all times. Any asylum seeker who fails to return to the supervised hostel on time or who otherwise disrupts the hostel or breaches its rules will be immediately returned to high security detention.

Asylum seekers will be permitted to work and if working will be responsible for meeting their day to day living costs. Asylum seekers unable to secure work will receive the equivalent of special benefit and will be responsible for meeting their day to day living costs from that payment.

Children resident at supervised hostels will attend local schools. Adults in supervised hostels will be given training to assist with the transition to living in Australia, including English language training.

Monitoring detention conditions

Labor will appoint an Inspector-General of Detention, an independent statutory office holder, who will hear and resolve complaints from detainees about detention conditions. The Inspector-General will also be able to inquire into broader problems on his or her own motion. The Minister for Immigration may require the Inspector-General to inquire into and report on an issue of concern. The Inspector-General will be supported and advised by the Immigration Detention Advisory Group.

Review of detention

Labor will ensure that detention is subject to public review. A review of detention will be triggered if an asylum seeker is in detention for more than 90 days.

The Asylum Seeker Claims Processing Review Committee will review any case where an asylum seeker has been kept in detention for more than 90 days. Such a review must be completed within 30 days. This review process will also apply to asylum seekers detained on Christmas Island.

The Committee's recommendations in respect of the future handling of each individual case will be made public and laid before Parliament. If the Minister for Immigration does not accept the Committee's recommendations, the Minister will be required to explain the failure to do so to Parliament. If an asylum seeker continues to be detained after the Committee's review of the case, the asylum seeker's detention will continue to be reviewed by the Committee on a monthly basis.

Visa conditions for genuine refugees

Until recently, those who arrived in Australia by boat and who were genuine refugees were given Permanent Protection Visas and could apply for family reunion and ultimately citizenship.

In 1999, this was changed and a temporary protection visa (TPV) was introduced. TPVs, as well as being time limited, do not allow the holder to have any form of family reunion, to access the Job Network or to access English language classes. Under the 1999 legislation, if, at the end of the TPV, the person is found to still be a refugee, then they will be entitled to a Permanent Protection Visa. In 2001, the law changed again so that some people are now only ever entitled to rolling TPVs and, while they may be in Australia for the rest of their lives, will never be entitled to family reunion.

Labor was prepared to support TPVs on the basis that it was a way of deterring people from seeking to move from countries of first asylum, becoming involved with people smugglers, risking their lives at sea and arriving unauthorised.

However, it appears that TPVs are having the reverse effect and are encouraging people smuggling and unauthorised arrivals. Specifically, the family of people who will never have family reunion rights are now seeking to arrive unauthorised because it is the only way of effecting family reunion.

Labor will address this situation and seek to deter people smuggling and unauthorised arrivals by:

- Keeping a short term TPV for asylum seekers who have used people smugglers and arrived unauthorised;
- At the expiration of the short term TPV, assessing whether circumstances have significantly changed in the country of origin;
- Granting permanent protection visas if the circumstances have not changed as the TPV holder is still a genuine refugee;
- Fully reassessing claims if circumstances have changed; and
- Giving priority to family reunion applications from those who have settled in the regions of Australia designated as in need of population and with labour shortages.

To facilitate a rapid and successful transition into the Australian community, Labor will allow TPV holders to access settlement services including English language training and the Job Network.

Staying in front

To ensure that Australia leads the world on these issues, Government needs on-going access to the best possible expert advice. Labor will create an expert advisory council on asylum seeker and refugee issues.

Co-chaired by the Ministers for Population & Immigration and Foreign Affairs, the Council will include experts in refugee issues and security issues, peak agencies and eminent Australians. The Council will advise on policy responses to emerging issues, aid priorities, refugee intake, settlement, claims processing and detention.

Costing

Labor's policy will be fully costed by the next election, however it is anticipated that all new commitments can be met from existing Budget outlays, including savings from ending the 'Pacific Solution'.

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Chapter One –

The Howard Government has failed to decide who will come to this country

1. Introduction

Despite its tough rhetoric, the Howard Government is failing to protect Australia and has undermined the Australian way. In opting for the bandaid of the 'Pacific Solution' (now officially known as the 'Pacific Strategy' in recognition that it falls a long way short of being a solution), the Howard Government has wasted resources and put domestic political point scoring ahead of a long term comprehensive solution.

Labor rejects the 'Pacific Solution'. Labor will implement a better solution that protects Australia and protects the Australian way.

2. The Howard Government's record pre-*Tampa*

In the time between coming to office in March 1996 and the arrival of the *Tampa* in August 2001, 213 unauthorised boats (with 11,513 people) arrived in Australia's migration zone. These included arrivals on the eastern coast, including one near Townsville, one near Scotts Head on the mid-north coast of NSW and one as far south as Port Kembla. Large numbers also arrived at Ashmore Reef and Christmas Island¹.

The fact that increased numbers of boat people would be seeking entry to Australia in the second half of the 1990s was foreseeable. Known and identifiable factors relating to the likelihood of boat arrivals included:

- A closing of borders in European countries;
- The consolidation of Taliban rule in most of Afghanistan from 1995-96 onwards, leading to the displacing of hundreds of thousands of Afghans;
- Continuing oppression in Iraq;
- Easier, cheaper travel and advances in worldwide communications facilitating travel and knowledge of destinations; and
- The growth of people smuggling, with people smugglers promoting Australia as a 'next best' destination to Europe.

Despite rising numbers of boat arrivals, which regularly reached well down the Australian coastline, an examination of media releases, speeches and statements in the Parliament made by Howard Ministers in 1999 shows a Government ignoring the issue.

Indeed, despite warnings from Labor in May 1999 that further action on boat arrivals was needed², Senator Vanstone, then Minister for Justice and Customs, urged that the arrival of boat people be kept in context, saying that 10 times the number of unauthorised arrivals attempted to enter Australia via scheduled airline flights³.

The Howard Government had access to intelligence pointing to the growth in numbers of Middle Eastern asylum seekers heading to Australia and the growth of people smuggling as a well-organised criminal activity in Indonesia and elsewhere. As the numbers of unauthorised arrivals grew, the Howard Government failed to act. Indeed, the Howard Government did little more than maintain detention policies and hope for the best.

The Howard Government did not take any of the actions really required to address the issues. It did not:

- Improve protection of Australia's coast or expand efforts to detect and smash people smuggling rings;

- Lead international debate to seek global, multilateral solutions to the emerging problem;
- Secure agreements in our region to detect and destroy people smuggling and to deter forward transit by asylum seekers;
- Review its aid programs to try to ameliorate the factors causing people to flee source countries and countries of first asylum; or
- Expand resources dedicated to processing in countries of first asylum to discourage asylum seekers from engaging in forward transit.

The enormity of the Howard Government's failure is starkly shown by the fact that it was not until May 2000 that it bothered to focus on people smuggling through the establishment of a joint DIMIA/AFP Strike Team.

In addition, Australia did not secure any form of formal bilateral agreement with Indonesia regarding asylum seekers until 2000. Even today, the Howard Government has been unable to secure Indonesia's agreement to make people smuggling a criminal offence in Indonesia.

Prior to the *Tampa* incident, the Howard Government had given no indication that an approach such as the 'Pacific Solution' was a policy of merit. Indeed, considerable sums had been spent since 1997 in upgrading and redeveloping detention centres around Australia⁴.

Standard practice until the *Tampa* incident was for unauthorised boat arrivals to be taken to:

- Port Hedland
- Curtin (recommissioned September 1999)
- Woomera (commissioned November 1999).

Port Hedland and Curtin offered the advantage of being relatively close to where the vast majority of unauthorised boat arrivals were landing. On Christmas Island, demountable air-conditioned accommodation and a community sports hall were also used as temporary detention and processing facilities. Additionally, the former Quarantine Station on Cocos Island was refurbished and has accommodated a total of 170 people at different periods, with the last departing on 22 March 2002⁵.

Until the *Tampa*, despite continued growth in the number of unauthorised boat arrivals, the Howard Government talked tough but did little and was content to process asylum seekers on the Australian mainland.

3. The *Tampa* incident

The *Tampa* incident started on 26 August 2001 when a routine surveillance flight by Coastwatch revealed the presence of a vessel approximately 80 nautical miles northwest of Christmas Island. The *KM Palapa I* was carrying 433 potential asylum seekers en route to Australia before it broke down.

One can only speculate whether, if the *KM Palapa* had successfully reached Ashmore Reef or Christmas Island, the Howard Government would have done no more than treat it like the earlier 213 boats and taken the asylum seekers on board to detention centres on the Australian mainland for processing.

But with an election to be conducted within two months and the Howard Government trailing Labor in the polls, the *KM Palapa* was an electoral opportunity too good for the Howard Government to miss.

On 27 August 2001, Australian Search and Rescue (AusSAR) broadcast a call to any merchant ships in the vicinity to render assistance to the stricken vessel. A Norwegian

freighter, the *MV Tampa*, responded to the call, intercepting the vessel and bringing its passengers aboard. The master of the *Tampa*, Captain Arne Rinnan, had intended to take the people rescued to a port in Indonesia, but the passengers demanded to be taken to Christmas Island.

With no doctor on board and two urgent medical cases, Rinnan then requested permission to berth at Christmas Island. This request was denied by the Howard Government, which directed that the asylum seekers be taken to Indonesia. When the *Tampa* continued to proceed to Christmas Island and entered Australian waters, the Australian Special Air Service troops boarded and took control of the ship.

On 29 August 2001, an ADF doctor was required to assess the medical conditions of the 433 asylum seekers in 43 minutes – less than six seconds for each person – in time for the Prime Minister to use the information in Parliament. The official SAS record reads: “Four pers[ons] required IV (2 urgent including 1 woman 8 months pregnant).” Despite this, Howard told Parliament that day: “I should inform the House that the preliminary assessment carried out by the Australian Defence Force doctor indicates that nobody, and I repeat nobody, has presented as being in need of urgent medical assistance as would require their removal to the Australian mainland or to Christmas Island.”⁶

In this charged atmosphere, the Howard Government, guided by the polls, conceived the 'Pacific Solution' and an election strategy based on border security.

In pursuit of this strategy the Howard Government attempted a number of unseemly, inappropriate and desperate actions. These included the attempt to push through 'border protection' legislation, which would have, among other things, legalised murder, and a round of hurried approaches to other nations to take the asylum seekers on the *Tampa*. These approaches included:

- Minister Downer asking the UN Administrator in East Timor to allow the *Tampa* passengers to be transferred to a camp in East Timor. This request, made on the day of East Timor's first election, was refused, despite a separate approach from John Howard to UN Secretary-General Kofi Annan⁷.
- Unsuccessful approaches to the governments of Fiji, Tuvalu, Palau and Kiribati about the possibility of setting up new detention camps⁸.

On 1 September 2001, John Howard announced his 'truly Pacific solution' to the dilemma he had created by promising that no asylum seeker on board the *MV Tampa* would be allowed to set foot on Australian territory.

This 'Pacific solution' was based on striking agreements with Papua New Guinea and Nauru to allow the 433 Afghan and Iraqi asylum seekers to be transferred to holding camps on their soil while their claims to refugee status were processed.

4. The 'Pacific Solution'

The 'Pacific Solution' was conceived in haste and is costly, unsustainable and has no on-going benefit other than changing the way and location in which asylum seekers are processed. Each of these fundamental flaws in the so-called 'Pacific Solution' is detailed below.

The Howard Government claims that the 'Pacific Solution' has worked to stop further boat arrivals. This is not true; what has worked is Operation Relex, the deployment of the navy to detect and deter unauthorised boats, and better policing in Indonesia to smash people smuggling rings. Neither the defence deployment nor the better policing are part of, or dependent on, the 'Pacific Solution'.

The Howard Government deceived the Australian people by fostering the belief that the 'Pacific Solution' would ensure that asylum seekers processed in PNG and Nauru would not end up in Australia. As of 30 November 2002, 312 people from the 'Pacific Solution' have been settled in Australia with further arrivals expected over the next few months. The Government is refusing to tell the truth about its plans for future arrivals. The only thing that is clear is that all the Howard Government has achieved is to delay the arrival of these asylum seekers from 2001 to 2002.

(a) Total costs

The true costs of the 'Pacific Solution' has never been disclosed by the Howard Government. Instead it has met each successive call for disclosure from the public and from Parliament with increasing contempt.

However, even on the basis of piecemeal information released thus far, it is clear that the cost of detaining and processing asylum seekers off-shore is hugely expensive and the 'Pacific Solution' has caused an enormous and expensive distortion of Australia's aid priorities in the Pacific.

Declared budget appropriations

The initial aggregate appropriation in the May 2001 budget for processing asylum seekers in the financial year 2001-2002 was for \$250 million. However this was supplemented by an additional allocation of \$147 million in the mid-year review of the budget in October 2001, and then by another \$85 million through the additional appropriations round of February 2002.

This means that the total declared costs of appropriations specifically stated as devoted to the processing of asylum seekers, both on-shore and off-shore, in 2001-2002 was \$482 million, or more than 34 times the amount Australia spent on its refugee program in the same year (\$14.3 million). More recent information has shown that DIMIA also spent \$71.4 million on consultants in 2001-2002 as part of managing the 'Pacific Solution'⁹.

It is known from testimony given to Senate Estimates in April 2002 that the detention of asylum seekers on Nauru and Manus Island, Papua New Guinea, cost taxpayers more than \$140 million in the financial year 2001-2002¹⁰. This included \$72 million spent on establishing and running the two detention centres on Nauru and \$42.5 million for the camp on Manus Island. Beyond this, \$26.5 million of "additional aid" was allocated to Nauru to meet pledges made by then Defence Minister Peter Reith and Foreign Minister Alexander Downer in return for Nauru taking asylum seekers.

In the 2002-2003 budget, Treasurer Peter Costello announced that nearly \$1.4 billion would be devoted to a series of measures to prevent asylum seekers from being able to lodge an application for refugee status within Australia's migration zone.

These included the following allocations to the 'Pacific Solution' over four years:

- \$219 million for the construction of a detention facility on Christmas Island;
- \$430 million over 4 years for the reception and processing of asylum seekers on Nauru and Manus Island;
- \$455 million over 4 years for reception and processing at Australian external territories (Christmas and Cocos Islands);
- \$5.6 million for travel;
- \$75.4 million for the Regional Co-operation Agreement (UNHCR, IOM);
- \$7 million to AusAID for Nauru under MOU; and

- \$2.1 million for the continuation of DFAT's 'temporary' consulate on Nauru.

These costs were developed on the basis of an estimated 4500 asylum seekers per year for the next four years, revised downwards from 5,500 in 2001-02. The Government knows this result does not justify the huge expenditure and it is desperately looking for a way out of the 'Pacific Solution'. Meanwhile their Budget provides \$430 million over four years for the processing of asylum seekers in the Pacific, even though the Howard Government does not have a four year agreement with any Pacific nation. Instead of coming clean, and admitting the 'Pacific Solution' has been a costly failure, the Government is continuing to dither about what to do next and is wasting millions in the process.

(b) *Smoke and mirrors*

But this is only part of the picture. The Howard Government has continued to hide the true cost of the policy through various smoke and mirrors tricks.

Of these, the largest fiddle has been to simply refuse to provide any information to the Australian public or Parliament on the true cost of the military's support of the policy. As highlighted recently in the Senate Committee Report from its inquiry into 'a certain maritime incident', Defence has been heavily involved throughout the execution of the policy.

The majority of these costs have been absorbed by Defence within existing Budget allocations, although there have been minor additional appropriations (e.g. \$19m in the February 2002 Additional Estimates).

This is designed to suggest that these operations have not had additional costs. Of course, this is an illusion, since the opportunity costs of using ADF resources in this manner has been that they have not been available to other deployments.

In addition, a number of other Departments and agencies have similarly been hiding the true cost of this policy by redeploying existing resources within their portfolios.

(c) *Cost breakdown*

The lack of transparency at the aggregate level means that it is extremely difficult to determine the breakdown of costs.

Accommodation and processing

The costs to the Immigration portfolio for the establishment of temporary facilities on Nauru and Manus Island and the new permanent facility to be built on Christmas Island have been listed above. However these figures give no indication of how much it is costing DIMIA to undertake the processing of asylum seekers on Nauru and PNG. All processing of refugee claims is being done by DIMIA except for those asylum seekers who came off the *Tampa* and a boat intercepted at sea known as the *Aceng*. The processing of these people is being handled by UNHCR.

There have also been further costs borne in various other portfolios. For example, Defence was involved in Nauru in the initial negotiations, provision of security and inspection of sites. It was then heavily involved in the construction of the processing centre, with the commitment of up to 81 personnel. It was also involved in PNG in similar activities, although to a lesser extent.

Other portfolios involved included the Australian Agency for International Development, the Australian Customs Service and the Department of Transport and Regional Services, but it is not possible to determine the costs incurred by these agencies.

Transport

The Government has consistently refused to provide any details of the true costs of the transportation of asylum seekers to and from the third countries, carried out largely by the ADF.

The Senate Committee inquiring into 'a certain maritime incident' reported that the ADF provided extensive air-lift support for the 'Pacific Solution', with 1065 hours of support provided between August and December 2001, including a period where up to eight C-130 aircraft were employed.

The cost of this support has never been disclosed directly. However, an estimate based on the platform cost of \$47,000/hour for P-3C Orions would suggest that this aspect of the ADF support alone could have cost in excess of \$50 million for five months.

In addition, the ADF has also transported asylum seekers to offshore processing centres, using the heavy landing ship *Tobruk* and the amphibious transport *Manoora*.

Media reports at the time indicated that it took both ships over a month to transport asylum seekers to Nauru; the costs involved could amount to some \$40 million. This is separate to the ongoing costs of keeping ships on station in the area. Labor has costed the total ADF operation for the 'Pacific Solution' at approximately \$650 million.

Diplomacy and foreign aid

The Budget figures also do not disclose how much the 'Pacific Solution' is costing in relation to on-going aid to cover:

- the provision of security on Nauru and PNG by Australian Protective Service and the Federal Police; and
- additional costs to the Department of Foreign Affairs & Trade to deal with the government-to-government issues arising out of the arrangements.

In terms of aid monies, it is known that Australia's Memoranda of Understanding with Nauru (signed in September 2001 and December 2001) pledged a total of \$30 million in aid for taking up to 1,200 asylum seekers. This money is to be spent on a range of measures, a number of which do nothing to assist Nauru in developing as a nation and cannot be sustained. For example, \$10 million was allocated to pay back debts incurred in buying fuel and up to \$3 million to pay hospital bills for Nauruans seeking treatment in Australia. Other programs such as tertiary scholarships will require on-going funding¹¹.

This pledge of \$30 million represents a major distortion in aid priorities. In the Australian aid budget for 2001-2002, Nauru was scheduled to receive \$3.4 million through AusAID. Thirty million dollars is greater than all AusAID funds provided to Nauru between 1993-2001. It is also more than 18% of the total annual AusAID budget for the Pacific Islands excluding PNG¹².

In its Mid-Year Economic and Fiscal Outlook Statement 2001-2002, the Government budgeted an extra \$16.4 million for AusAID to pay for fuel and hospital bills and other projects for Nauru. However, combined with the existing AusAID budget of \$3.4 million, this extra allocation was clearly not sufficient to meet the amount of \$30 million promised. It remains unclear whether the necessary funds to meet the \$30 million pledge were drawn from other AusAID commitments or elsewhere in the Budget.

The accountability issues extend beyond the Howard Government's failure to disclose the costs of the 'Pacific Solution'. Australia lobbied, unsuccessfully, to have Nauru removed from the List of Non-Cooperative Countries and Territories (NCCTs) maintained by the OECD

Financial Action Task Force on Money laundering. Nauru's toleration of money-laundering through shell banks with no presence in Nauru itself is notorious^{13, 14}.

Given this, there is no guarantee that monies provided to the Nauru government have been used for the purposes for which they were intended.

Assistance and funds were also used to gain the agreement of Papua New Guinea to set up a new detention camp on Manus Island, initially to take 216 Iraqis. This was later extended to allow for a total of 1,000 people, although only 356 were taken to this facility¹⁵.

The AusAID budget for 2001-2002 for PNG was \$164.6 million. Australia provided an additional \$1 million to a trust fund established to meet the costs associated with PNG's role in setting up the processing centre. It is not clear whether this trust fund is being continuously topped up. It is also not clear whether AusAID has had its legitimate aid priorities in PNG distorted by the need to especially assist Manus Island where the detention camp is located.

What is known is that the Australia Government has agreed to pay for the following:

- Refurbishment of the Lombrum Base Hospital with supply of X-ray machines and other medical equipment;
- Sanitation and sewerage system at the camp site;
- A water treatment plant;
- Disposal of rubbish and waste;
- Electric water pumps and purifiers;
- Office space, transport and communications systems for the national liaison team;
- Support back-up generators for a stable power supply; and
- Settlement of outstanding water payments¹⁶.

It is clear that the 'Pacific Solution' is extremely costly and that the Howard Government continues to hide the full costs from Australian taxpayers.

(d) Unsustainability

The Nauru facility was established on 19 September 2001 and the Manus facility on 21 October 2001. The International Organisation for Migration (IOM) has been contracted by DIMIA to manage and operate both facilities. Their responsibilities include managing the accommodation, the provision of food, water, power, sanitation, laundry, medical and other needs. They are also responsible for counselling and facilitating voluntary returns to the country of origin. The Howard Government is responsible for effecting forcible returns.

The Nauru nightmare

It appears that the initial arrangement with Nauru was to have asylum seekers processed and resettled or otherwise removed by May 2002. This timetable was completely unrealistic. Indeed the first round of processing decisions was not available until 8 April 2002. Some 842 refugees remain on Nauru¹⁷.

President Harris of Nauru indicated his concerns about the timetable slipping so radically. In January he gave notice that he wanted faster processing so that the asylum seekers could be gone by mid May¹⁸. On 10 June, during a visit to Australia, President Harris blasted the 'Pacific Solution' as a 'Pacific nightmare', and claimed that Nauru had not seen even half of the \$30 million promised¹⁹.

This precipitated a crisis meeting of Minister Downer and President Harris, and denials from Downer that funds had not been provided. On the ABC TV program Lateline on 10 June, the Minister said that \$19.5 million (including \$10 million for fuel) would be spent by 30 June and there was a commitment to provide another \$7 million in the next financial year (2002-03). It is not possible to know if these were the conditions Nauru agreed to when the MOUs were signed or represent new expenditure commitments.

Apparently Minister Downer was unable to provide a departure date for the asylum seekers on Nauru, and President Harris later stated "If they can tell me tomorrow if they must stay another 'x' months, then I will tell my people ... that is all I want."²⁰

Harris saw the political implications too: "Tampa won it for them at the last election... I have an election coming up in 10 months and I'm not riding too well."²¹

The concerns of President Harris, who is preparing for elections in the first quarter of 2003, appear to have been assuaged at an unknown cost, as it was recently announced that the MOU with Nauru has been extended through to May 2003.

Manus Island and Papua New Guinea instability

The Memorandum of Understanding with PNG relating to Manus Island was initially to October 2002 and for up to 1000 refugees²².

However it appears that only 356 asylum seekers have been taken to Manus Island and of these, only 102 remain. Unrest at the centre in September forced the relocation of 40 people described as 'trouble makers' to Nauru²³.

When Sir Michael Somare was elected as the Prime Minister of Papua New Guinea in August 2002, he was critical of the asylum seeker deal made between the Australian Government and that of the former PNG Prime Minister Sir Mekere Morauta, and announced that his government was not prepared to accept any more boat people into Manus Island²⁴.

Papua New Guinea is facing increasing social instability and a recession and budget crisis has placed the nation on the brink of bankruptcy. The government is looking for financial support and the provision of emergency funds. Somare has accused Australia of bias against his government because of an agreement between Australia, the World Bank and the International Monetary Fund to withhold further assistance from the Somare Government to force the adoption of budgetary reforms²⁵.

However it has been recently announced that the PNG Government has offered to extend its agreement over Manus Island with the Australian Government and that this offer has been accepted, with an agreement through to November 2003²⁶. The terms and conditions of this new agreement are not known.

Four year planning is wishful thinking

While the Howard Government has budgeted to maintain the 'Pacific Solution' over the next four years, this appears to be no more than an act of wishful thinking. The Howard Government has no four year agreements for off-shore processing and is struggling to hold to its current arrangements with Nauru and PNG.

The 'Pacific Solution' is not a durable solution, it is a farce with a script hastily written as it plays out. Even if the Howard Government manages to cobble together arrangements to keep it in place for another year or two, it is simply not credible to assert that the 'Pacific Solution' will endure as a five, ten or twenty year solution to the issue of asylum seekers and refugees.

Indeed, the Howard Government by its conduct has effectively conceded that the 'Pacific Solution' is doomed. The Howard Government has legislated to ensure that it can bring

asylum seekers from Nauru and PNG into detention on the Australian mainland. It is also rushing the construction of the new facility at Christmas Island to cope with such returns, by ensuring the facility is not subject to environmental impact assessments and approval from Parliament's Joint Standing Committee on Public Works.

(e) UNHCR processing for Tampa asylum seekers is the only benefit of the 'Pacific Solution'

The fact that the 'Pacific Solution' was hastily cobbled together to maximise the political effect of the *Tampa* incident is made clear by the lack of on-going benefits.

The asylum seekers who came off the *Tampa* and the asylum seekers intercepted at sea from the *Aceng* are subject to one-off arrangements that were negotiated by the Howard Government at the height of the *Tampa* incident.

These special arrangements flow from the fact that UNHCR accepted that the asylum seekers on the *Tampa* had not engaged Australia's protection obligations under the Refugee Convention because of the way in which they were rescued at sea, but had engaged the world's protection obligations.

Having taken this decision, UNHCR agreed that it would be responsible for processing the claims of these asylum seekers and that those found to be refugees would be the subject of global burden sharing arrangements where resettlement opportunities would be sought in third countries, although Australia was to take its fair share and those with family connections to Australia.

This arrangement was extended to those rescued from the *Aceng* as they became physically mixed in with the *Tampa* asylum seekers.

However, UNHCR has not been prepared to further extend the arrangement.

Consequently, the other 1,178 people on the other 10 boats that have been intercepted at sea after the *Tampa* and subjected to the 'Pacific Solution' remain Australia's obligation in every sense. Their claims are being processed by DIMIA officials and Australia is responsible for resettling within Australia those whose claims are found to be genuine²⁷.

As UNHCR does not forcibly return people, Australia is responsible for all forcible returns irrespective of whether the asylum seekers involved are *Tampa* asylum seekers or not.

Given Australia's obligations to process, resettle and return, the Howard Government is only able to point to one on-going benefit of the 'Pacific Solution'. Minister Ruddock has said on numerous occasions that the 'Pacific Solution' is required in order to avoid what he refers to as 'Convention plus' and the 'bells and whistles processing in Australia'²⁸. Consequently the Howard Government is spending hundreds of millions of dollars of taxpayers' funds solely because it enables a truncated processing system to be used for some refugee claims.

5. Conclusion

The Howard Government's so-called 'Pacific solution' is a costly and unsustainable initiative that creates more problems than it solves. The true costs of this flawed policy may never be known as they are hidden in cryptic budget measures. The ultimate irony is that Australia is still faced with the on-going problem of what to do with unauthorised arrivals, both those found to be genuine refugees and those whose claims are not accepted.

Chapter Two –

Protecting Australia

1. Introduction

In dealing with asylum seeker issues, the Howard Government is playing politics rather than seeking a long term comprehensive solution. Politically, it has suited the Howard Government to pretend that the only challenge to Australia is unauthorised boat arrivals.

This is simply untrue. To protect Australia, requires a comprehensive approach which deals with border security 24 hours a day, seven days a week and that adequately protects against drug importation, gun running, the importation of human, plant and animal diseases, illegal fishing and unauthorised aircraft movements as well as irregular people movement by boat. Protecting Australia also requires meeting all the immigration challenges and in particular, dealing with the over 60,000 persons who are in Australia illegally.

Labor will protect Australia from all the challenges it faces as detailed in this Chapter.

2. Persons working illegally in Australia

(a) Over 60,000 people are in Australia illegally

While the Howard Government has sought to profit politically from talking tough on unauthorised boat arrivals, the real problem with illegal immigration continues to go unaddressed.

In the year prior to the last election (10 November 2000 to 10 November 2001) the number of unauthorised boat arrivals, including those diverted through the 'Pacific Solution' was 6345²⁹. This number pales into insignificance compared with the estimated 60,103 persons illegally in Australia as at 30 June 2001. DIMIA has also admitted that 27 per cent of these overstayers have been here illegally for more than ten years³⁰.

The estimate of 60,103 relates to persons who enter Australia legally but overstay their visas or breach visa conditions and come to the attention of the authorities. DIMIA is not able to estimate how many people enter illegally and remain undetected.

(b) Illegal workers

Of these 60,103 illegal people, DIMIA estimates around 30,000 are working illegally. The number of illegal workers is swelled by those who work in breach of visa conditions (for example, people who are in Australia on tourist visas and working). DIMIA cannot even estimate how many other persons are working illegally in breach of visa conditions and DIMIA resources devoted to compliance activities has dropped in recent years.

In addition, there is mounting evidence that the subclass 456 business visa and the subclass 457 skilled visa are being misused to get overseas workers in to Australia who are then exploited. Disturbingly, organised rackets appear to be involved, not just individual employers.

This underground workforce enables unscrupulous employers to undermine Australian wages and conditions and reduces the number of jobs available for Australians. It also enables the exploitation of overseas workers, who have no real ability to complain. A 1999 DIMIA Report *'Review of Illegal workers in Australia'*³¹, stated that the large majority of illegal workers are part of the black economy and are working in low paid positions, are often paid below legal rates, do not pay tax and claim social security to which they are not entitled.

Working Australians are entitled to have their jobs and wages and conditions protected from illegal and exploited foreign labour. For working Australians the problems caused by illegal workers is of greater day to day impact than the arrival of asylum seekers. The Howard Government is ignoring this problem because it does not want to have a fight with the employers who are profiting from the scams.

(c) Employer exploitation of temporary workers

Long stay business (subclass 457) visas

Temporary long stay business (subclass 457) visa holders are sponsored by employers. Subclass 457 visas allow employers to sponsor an overseas employee if their business will 'advance skills through technology or training' and the employer agrees to 'comply with Australian industrial laws'.

There is increasing evidence of unscrupulous employers sponsoring temporary workers into Australia on the basis of claiming a skill shortage and then exploiting these foreign workers. In one particularly disturbing case recently, a Serbian master artist and painter of religious frescoes was brought to Australia to paint a church. For four years he was paid less than \$200 a week, forced to live on-site at the church and pay for his work materials from his paltry weekly wage³².

DIMIA evidence indicates that employers have breached industrial laws in the way in which they have treated these workers³³. It is likely that the detected cases are only the tip of the iceberg with many of these foreign workers being too scared to report breaches or unaware of their rights under Australian industrial law³⁴.

During the nearly two years between July 2000 and May 2002, DIMIA recorded serious breaches by 24 sponsoring employers involving 63 subclass 457 visa holders. These breaches included:

- Underpayment (below award or below agreed amounts);
- Taxation offences;
- Excessive working hours;
- Failure to provide superannuation;
- Non-payment of overtime, penalties or other agreed payments;
- Provision of sub-standard accommodation;
- Demands for excessive payments or bonds in regard to accommodation;
- Breaches of Occupational Health and Safety standards;
- Unfair dismissal; and
- Intimidation.

Short stay (temporary) business (subclass 456) visas

It is also clear that the temporary short stay business (subclass 456) is being exploited with evidence of South African 'slave rings'.

The subclass 456 was created in 1995 and the then Minister, Senator Nick Bolkus, said that "it will be issued on the basis that the activities the holder is, or will be engaged in, cannot be done by an Australian permanent resident or citizen"³⁵. In November 1997, in response to evidence that some 456 visa holders were working for extended periods in Australia in relatively unskilled professions, Minister Ruddock changed the scheme so that applications

would only be accepted from outside Australia. The Minister's changes have not fixed the problem.

Applications for subclass 456 are accepted at most Australian overseas posts and it is not necessary to conduct a face-to-face interview before the visa is awarded. Electronic applications are invited and may be lodged by someone other than the applicant e.g. an agent. It is possible that if anything on the application was considered suspicious or raised questions, then the applicant would be interviewed by DIMIA representatives at the mission where it was lodged, although interviews do not occur as a matter of course. It is obviously very easy for the applicant or the agent to simply lie when completing the form. Given there is no way for DIMIA to check the validity of signatures on the form, forging signatures is easy.

The way in which these visas are misused was exposed by the recent case of a South African man who was seriously injured in Lake Cargelligo, NSW, in October 2002. He arrived in Australia in August 2002 on a 456 visa but was not a person with unique skills. He worked as a labourer in the construction industry, 14-hour days, seven-day weeks and was promised full remuneration for his labour upon his return to South Africa. His wife in South Africa is understood to have received a weekly stipend of \$100. There were two deaths at the site, including the employer of the man, also a South African national.

Despite sustaining serious injuries, the man was discharged against doctor's orders in less than a week from hospital and placed on an Australia to Johannesburg flight, paid for by his employer's widow^{36, 37}.

Investigations revealed his visa was obtained by having an Australian company send a request on letterhead for a suitably qualified business person to travel to Australia to undertake commercial research. On the strength of the letter, the visa was granted and the man did not have to apply in person³⁸. DIMIA has confirmed such business visas are commonplace.

The Minister has angrily dismissed serious allegations raised by the South African Government regarding the existence of similar schemes where black labour is exploited. However evidence of abuse of business visas continues to grow, with lawyers claiming three black South African chefs have been underpaid more than \$300,000 by a Sydney restaurant, operated by a white South African migrant. All three were brought to Australia on 456 visas and transferred after three months to 457 visas. None would have been entitled to either visa subclass on any genuine application of the law and regulations. Most of their earnings were repatriated to South Africa in rand.

The Minister's denial has been further undermined by revelations that five senior DIMIA officers have been posted to Australia's High Commission in Pretoria, heightening fears that applications are being speeded up, increased, or both, at a time of serious concern about the whole procedure.

In 2001-02, 133,890 offshore subclass 456 visas were issued and the Pretoria post made up 6665 of these or 5%. In 2001-02, only 337 subclass 456 visas were cancelled, a miniscule proportion of the nearly 134 000 awarded each year³⁹. If someone can be given such a visa with no interviewing and no checking, it is highly probable that these low cancellation figures do not fully reflect the problem.

Educational providers

Additionally, evidence has emerged that the education industry has become an increasing focus for visa misuse and illegal working. Under these scams, 'visa-shop colleges' facilitate

the entry in to Australia of people who are notionally students but who are really seeking to disappear into the Australia community and work illegally.

For example 19 students from various Sydney 'visa-shop colleges' were found fruit picking in northern Queensland. In 2001, more than 6000 overseas students were deported from Australia for visa 'irregularities', having clearly had no intention of studying, but looking to use this backdoor entrance to Australia⁴⁰. Many private colleges have been little more than shopfronts for this people trade. The Education Services for Overseas Students Act 2000 is supposed to improve the situation substantially, but confirmation that the illegal and fraudulent processes have declined as hoped is still pending.

DIMIA has acknowledged on numerous occasions that the industry has operated in the context of sophisticated immigration fraud⁴¹, yet the Government has failed to prosecute any private education provider. Fraud is a serious issue, both on the part of students and the providers, but there have been no prosecutions of the latter group. It is only recently that DIMIA and Department of Education Science and Technology have been given tougher, more far-reaching legislative powers. It remains to be seen how often these powers will be used.

(d) Howard Government's failure to act on people working illegally

The Howard Government has refused to address the problem of illegal work for two reasons. First, it has found it politically expedient to target boat people rather than protect Australia from all the immigration challenges it faces. Second, it is too frightened to stand up to employers.

The Howard Government did nothing in this area until 1999 when DIMIA conducted the Review of Illegal Workers in Australia. Following this Review, the Government launched initiatives in November 2000 to help employers to check work rights of prospective employees. This included a pilot work rights information line and a free call centralised work rights fax-back facility.

The Government canvassed the possibility of a new legislative sanctions regime, but a very negative reaction by employers, particularly the National Farmers' Federation, resulted in a backdown. Consequently, the only thing that happens to employers who employ illegal labour is that warning notices are issued.

In the absence of a new legislative sanction regime, it is an offence under the Migration Act to **be employed** illegally, but it is not an offence under the Migration Act to **employ** someone illegally. Such an employer would have to be prosecuted as committing an 'aid and abet' offence under the Crimes Act. To be convicted, it would be necessary to prove the employer 'knowingly' employed someone who is not authorised to work in Australia. The Howard Government has never prosecuted an employer under the Crimes Act.

In relation to employers who misuse sponsorship of temporary workers, the Howard Government does not have any power under relevant legislation to fine or prosecute such employers. Once an exploited foreign worker has been located, all the Howard Government can do is cancel the employer's sponsorship of that worker. It would be possible under current Howard Government laws for an employer to then go and sponsor and exploit another worker.

(e) A US style Green Card – Labor's plan to crack down on illegal workers

Unlike the Howard Government, Labor is prepared to crack down on illegally working including cracking down on employers who employ illegal labour.

There are many more foreigners in Australia temporarily with limited or no work rights than there have ever been before. Labor will tackle the growing problem of illegal working by introducing a Green Card style identification system for foreigners working in Australia.

All foreign workers will need a Green Card

Only Australian citizens (whether born here or naturalised), Australian permanent residents and New Zealand citizens who have entered Australia on a valid passport, have unrestricted rights to employment. Persons in these categories will not require Green Cards.

A foreigner, other than a New Zealander, who wants to come to Australia and work, will go through the current offshore visa application process. If successful in obtaining the visa, he or she will be issued a Green Card at the same time. A foreigner, other than a New Zealander, who enters Australia on a visa without work rights, but then successfully applies for a visa with work rights will be allocated a Green Card when the visa is issued.

The Green Card will be a photo-identification card that details name, nationality, passport number, visa status and Tax File Number (TFN). The Green Card will be marked to expire at the same date the relevant visa expires.

Green Card holders will be required to produce their Green Card to any employer who offers them paid work as an employee, whether full time, part time or casual. A Green Card holder who fails to do so will be guilty of an offence and be at risk of visa cancellation, deportation and a bar on returning to Australia.

With a Green Card system in operation there will be two categories of people entitled to work. Category One is Australian citizens, Australian permanent residents and New Zealand citizens. Category Two is Green Card holders.

Changes to the Tax File Number system

For a Green Card system to work, an employer must be able to tell quickly and efficiently whether a person is in Category One, is a Green Card holder in Category Two, or is in neither category and is consequently a person illegally seeking work.

Labor will amend the Tax File Number system so that a TFN on its face discloses whether a person is in Category One. Labor recognises that the current TFN system is not adequate for this purpose at the moment and the TFN has been abused over the years leading to taxation, immigration or employment fraud. Labor will make a full statement on its plans to protect Australia's revenue base in the coming months.

While full details of the Labor's new system will be contained in the statement, there are a number of obvious steps, which need to be taken to convert the current flawed TFN into one which employers can rely upon when checking the work rights of a potential employee.

Under the current system there is no way of telling from looking at a TFN whether it belongs to an individual, a company or a charity, or whether it belongs to an Australian citizen/resident or an overseas non-resident. Currently, the Australian Taxation Office (ATO) does not need to be satisfied that the person is legally in Australia before granting a TFN. While the preferred form of documentation to obtain a TFN for a foreigner includes a valid foreign passport with evidence of Australian immigration status, it is possible to obtain a TFN using a combination of other documents such as overseas birth certificate, Australian driver's license and marriage certificate, for example, none of which provide clear evidence of a right to be in Australia, let alone a right to work.

To change the TFN into an identifier of work rights will require steps such as:

- The form of the TFN will need to be different for individual workers from that available to companies, partnerships, charities and other taxable entities. This could be achieved by allocating different prefixes to different TFN types.
- With the Green Card system in operation, the only individuals who are seeking TFNs should be Australian citizens, Australian permanent residents, New Zealanders or foreigners needing a TFN for non-employment purposes like receiving interest or dividends. A separate application form could be used for foreigners who need a TFN for this purpose and the identifying prefix of the issued TFN could indicate that it is a TFN of that nature.
- Consequently, the only persons legally able to apply for and hold 'individual' TFNs, which would have an identifying prefix, would be Australian citizens, Australian permanent residents and New Zealanders. The form of identification required to obtain the TFN would need to be such that it was clear the applicant was an Australian citizen, Australian permanent resident or New Zealander.

Employers' responsibilities

With such a system in place it will be comparatively easy for an employer to check work rights.

On employment, an employer will be required to ask a prospective employee (whether Australian or foreign) to fill in the TFN declaration. Under current law, the employee may refuse to sign the declaration, but the employer is then obliged to deduct tax at the top rate. As a result, the vast majority of employees do produce a TFN. From the form of the new TFN the employer would be able to tell if the person was an Australian citizen, Australian permanent resident or New Zealander. Any one who had a TFN in a different form would be asked to produce their Green Card. If the person could not produce a Green Card then it would be clear to the employer that he or she was not a legal worker.

In the limited number of cases where employees refuse to produce a TFN, then the employer and the employee would have to jointly sign a declaration that employee had produced and the employer had sighted relevant identification sufficient to prove work rights, and a copy of the declaration and the relevant identification would need to be kept by the employer. Employers would be provided with lists of what constitutes relevant identification but the list would clearly include an Australian passport, an Australian birth certificate or a New Zealand passport.

Illegal Workers Roundtable

It will also be necessary to consult with State and Territory Governments, employers (in particular small business and farmers) and trade unions on the design of the Green Card system, its implementation and the on-going crackdown on illegal working. The Commonwealth will form an Illegal Workers Roundtable for this purpose. The Roundtable will monitor the effectiveness of the new system to ensure it is operating as envisaged, and not imposing an unfair burden on employers.

Enforcement

To back the Green Card system, an illegal workers strike force will be formed within DIMIA. The strike force will be resourced so that the number of compliance raids of workplaces which are at risk of using illegal labour can be substantially increased. Departmental statistics demonstrate that compliance raids on employers have dropped markedly in recent years. On a raid, DIMIA will be empowered to require the employer to produce all relevant records and workers to show Green Cards.

Any foreigner, being a person who is not an Australian citizen or permanent resident and not a New Zealander, found working without a Green Card will have committed an offence and be liable to visa cancellation, deportation and a bar on future return to Australia.

Any employer found employing such a person will be able to be charged with an offence and liable to fines and ultimately gaol terms for repeat offending. An employer will be presumed to have been aware of the lack of work rights of the illegal worker if:

- The employer cannot provide documentation showing that the worker provided an individual worker TFN or Green Card; and
- The employer cannot produce the signed declaration and a copy of the identification sighted.

Consequently, employers will not be guilty of offences if they are able to show deliberate TFN or identity fraud by the employee. However, the employer will be guilty if he or she had actual knowledge or were reckless about the matter and did not get an individual worker TFN, a Green Card or sight identification and complete the relevant declaration.

A Green Card will make an employer's obligations very simple and clear and will be much easier for the temporary worker. Such a streamlined process will also make DIMIA compliance operations easier.

3. Tougher policing and penalties for on and off shore people smuggling

(a) On shore people smuggling

The Howard Government has talked tough on stopping off shore people smuggling but ignored evidence of on-shore people smuggling. On shore a number of tour operators organise groups of 'tourists' into Australia, all of whom then say that they are asylum seekers and make a generally unmeritorious refugee claim.

The identity of these unscrupulous operators is well known within the ranks of legitimate migration lawyers, migration agents and tour group operators. But despite their identity being well-known the Howard Government has done nothing.

Before restrictions on work rights were introduced and charges introduced for failed refugee applicants it was reportedly common practice for people to arrive at DIMIA shopfronts and ask for "the \$30 visa" i.e. a protection visa application. Such persons included those with little chance of a successful claim such as people from the Philippines and the Pacific Islands. The numbers of onshore applications do not appear to have declined much.

Under the current Migration Act, the Government lacks the power to easily prosecute migration lawyers, agents and tour operators involved in this on-shore people smuggling.

(b) Better policing and tougher penalties are effective deterrents

As detailed in Chapter One, the current lull in boat arrivals is not due to the 'Pacific Solution' but due to the changes in Afghanistan and active law enforcement cooperation.

Law enforcement cooperation has been facilitated by the stationing of two AFP officers in Jakarta who work with Indonesian police and other authorities to detect and deter people smugglers. The Howard Government has also sought to better co-ordinate anti-people smuggling activity through a Canberra based AFP-DIMIA Strike Team and increased intelligence collection efforts focused on people smugglers.

Increased penalties for people smuggling have also played a role with the introduction of 20 years imprisonment or 2000 penalty units (\$220,000) or both for people convicted of organising the bringing of groups of non-citizens into Australia.

While these measures appear to have had some deterrent effect more needs to be done as part of a long term comprehensive solution.

(c) Labor's plan for tougher policing and penalties

Labor will improve our coastal surveillance through the Coastguard. Labor will also increase the number of AFP officers in Indonesia in order to maximise Australia's ability to stop people smugglers and stop boat departures. Currently, there are only two officers permanently stationed in Indonesia.

Labor will also review the effectiveness of the Canberra based AFP-DIMIA Strike Team, ensure it is adequately resourced and determine whether Strike Team resources and intelligence collection efforts are properly focussed on the most likely possible people-smuggling routes in the future.

Labor will increase penalties for people smuggling, including 20-year gaol terms, million dollar fines and confiscation of boats and will work cooperatively within our region to ensure people smuggling is a crime in every nation.

Labor will also ensure that an equally tough penalties regime applies to on-shore people smuggling.

4. Australia's ports - the weak link in border protection

(a) The issue

As a result of its fixation with smashing the power of maritime unions, the Howard Government has made our coast and ports a weak link in border protection. Their policy of "cheap shipping at any cost" risks Australia's security, jobs and the environment.

Commonwealth legislation requires all vessels operating on our coastal trade to be licensed and to comply with Australian laws, including paying Australian wages and workers' compensation. Since 1996, the Howard Government has been liberally issuing coastal voyage permits that bypass this requirement. These permits allow foreign ships to compete in the domestic interstate freight task while not being required to meet the same obligations as their Australian counterparts.

The number of permits issued to foreign vessels to operate in Australian waters without meeting the conditions required of Australian ships has increased by more than 270 per cent in the past decade⁴².

With foreign vessels having been given this competitive advantage by the Howard Government, Australian ship owners are registering their vessels in African countries or the Bahamas. These 'flag of convenience' vessels are also replacing their Australian crews with foreign crews paid lower wages, then returning to the Australian coast under the permit system.

Foreign crew on ships are not required to have work visas, although they are working in the domestic freight market for increasing periods of time. Instead, they receive Special Purpose Visas (SPVs) from DIMIA which are electronic in format only. The SPV does not need an application and DIMIA rarely checks that the number of visas matches the number of crew. The visa is granted by operation of law for particular categories of people for the duration of that particular purpose of stay in Australia. Because there is no application for this visa, DIMIA does not necessarily have a record of who is on a particular vessel when it arrives here, the number of crew and their nationality⁴³.

This means that foreign maritime workers can come ashore in Australian ports without the same scrutiny as other visitors or foreign workers entering Australia. Not only does this undercut Australian jobs with cheap exploited foreign labour, the risks of crew jumping ship

and making fraudulent refugee claims or simply joining the community are heightened. In the period 1 July 1996 to 31 May 2000, 185 people were located and identified by DIMIA as persons who had entered Australia as crew and who had remained unlawfully in Australia beyond the period of stay authorised by their visas. Of these 185 people, 100 lodged visa applications of which 78 were refugee claims⁴⁴.

With so little immigration and security scrutiny of coastal shipping, it is also possible that such ships could be used for people smuggling through stowaways.

The Federal Government recently announced to its State counterparts that port facilities, cargo and passenger ships would soon be subject to more stringent security checks in the wake of the events of September 11 last year. While this is welcomed, there was no mention of increased vigilance on the immigration and visa aspects of shipping and port activities in Australia. It seems that the Howard Government only cares about cheap shipping, no matter what the cost in immigration fraud, border security and the death of Australian shipping jobs and industry.

Internationally, standards for seafarer identification are contained in the International Labour Organisation's (ILO) Convention No. 108 of 1958. Since the attacks of September 11, the IMO and others have started processes to review, and if necessary strengthen the current standards.

At this stage, proposals to review the standards will be tabled at the IMO's Diplomatic Conference on Maritime Security that will take place later on December 2002. In parallel, the ILO General Conference in June 2003 will review and amend the relevant Convention. The amendments will standardise the format of identification documents, procedures for issue will be tightened, possibly through the development of electronic 'smart cards' to encode seafarer qualifications and thus address concerns regarding fraudulent certificates.

(b) Labor's plan to protect our ports

Labor will better protect Australia by better protecting our ports. Labor will ensure that foreign ship operators are not given open access to our coastal shipping trade, by stopping the open slather issuing of coastal permits. Labor will ensure that Special Purpose Visa processes are more rigorous to close this security hole. Labor will support the International Maritime Organisation in the development of seafarer identification cards and other measures to ensure world-class maritime security.

5. Protecting our airports

(a) Unauthorised air arrivals and airport security

People smuggling is an evil trade with the capacity to mutate to overcome measures to defeat it. As Labor strengthens our coastal border security, including better protecting our ports, it is important to reinforce security at airports so that people smugglers do not identify airports as the weak link.

Australian airports face a number of immigration challenges including:

- People trying to clear immigration with fraudulent documentation;
- People presenting for immigration clearance without the required visas to effect lawful entry to Australia;

- People presenting at immigration as asylum seekers and making refugee claims.

The majority of people refused immigration clearance are arriving at major airports (Sydney, Melbourne and Brisbane), but evidence shows that unauthorised air arrivals are now also targeting airports outside these major cities.

(b) Access to intelligence

To meet the challenge of people smugglers changing their mode of operations, Australia needs access to high quality intelligence and the capacity to respond quickly to that intelligence.

It is therefore of great concern that, under the Howard Government, the Auditor-General has found the following flaws in the intelligence capacity of DIMIA:

"... the current focus on short-term warning of overt unauthorised boat arrivals had impacted on the management of other risks relating to unlawful entry, such as identity and document fraud. In addition, the level of intelligence support given to airline liaison officers and immigration officers at domestic airports had been limited due to resource constraints."
[45](#)

The Auditor-General's report also criticised the absence of onshore resources devoted to the collection of information. Finally, the report found that DIMIA's intelligence analysis unit did not have a database to store, manage and analyse information, thereby exposing the Department to a number of risks. The unit currently has 20 staff and overseas there are Principal Migration Officers (Compliance) and Senior Migration Officers (Compliance) feeding into the network.

Even more disturbing was the Auditor-General's finding that Australian airports were not adequately supported with intelligence. The Auditor-General's finding was that a concentration on relatively small numbers of boat arrivals had diverted resources away from a more important task - airport compliance.

DIMIA has specialist compliance officers in Amman, Athens, Ankara, Bangkok, Beijing, Beirut, Colombo, Dili, Guangzhou, Hong Kong, Islamabad, Jakarta, Kuala Lumpur, Manila, Moscow, Nairobi, New Delhi, Phnom Penh, Pretoria, Shanghai, Suva, Taipei and Teheran. These officers work with local police and immigration officials to identify and report on the activities of people smugglers and counter foreign nationals who may try to enter Australia illegally. Given the Auditor-General's criticism, it seems possible that the work of these officers has not been sufficiently integrated into an intelligence collection and reporting function within DIMIA.

While the Howard Government maintains it is now overcoming the problems identified by the Auditor-General, this lack of competence in protecting Australia through competent intelligence gathering and use of intelligence at airports stands in stark contrast to the Government's tough talk.

(c) Labor's plan to protect our airports

Labor welcomes the post Bali upgrades to airport and immigration security announced by the Howard Government which have included additional Airline Liaison Officers and AFP being stationed at overseas airports and improvements on document security.

As the world reacts to the threat of terrorism and each nation upgrades its airport security it is important that Australia stays in front. It is also important to react if there are signs of increased people smuggling through airports.

Labor will maintain a vigilant approach and will address the criticisms of the Auditor-General and, across government, will strengthen intelligence collection and the quality of intelligence available at the operational level at airports.

6. Conclusion

Nothing is more important than protecting Australia's borders and Australia's national interest. Labor will better protect Australia by establishing a Coastguard, cracking down on illegal workers through a Green Card, smashing on and off shore people smuggling rings through tougher policing and harsher penalties for people smuggling, dealing in a better way with asylum seekers in the community and improving protection of our ports and airports.

Chapter Three –

The New Global Challenge

1. Introduction

This Chapter details Labor's long term comprehensive solution to protect Australia from the activities of people smugglers and irregular people movement while protecting the Australian way.

Labor's long term comprehensive solution addresses better protecting Australia, border security, the international framework and the domestic policy issues of refugee processing, intake and detention. This Chapter details Labor's plan for Australia to lead the world to a new solution on refugee and asylum seeker issues.

2. Meeting the new Global Challenge

(a) *The future of the Refugee Convention*

Australia is not alone in facing issues associated with asylum seekers and refugees. In fact, Australia, given its lack of land borders, has been comparatively protected. For example, the United Kingdom has 75-80,000 refugee claims made each year, while the USA has 90,000 - 100,000⁴⁶.

The burden facing undeveloped countries, which have become countries of first asylum for large outflows of people, is even greater. For example Pakistan had 2 million refugees from Afghanistan at the height of that refugee crisis and Iran has some 2.5 million Iraqi and Afghan asylum seekers⁴⁷.

Large scale global movements of people displaced by persecution, war, natural disaster, endemic poverty and the rise of organised people smuggling, has led to a questioning of the efficacy of the Refugee Convention in the modern world.

UNHCR maintains that attacks on the Convention's efficacy are "understandable" given the rising numbers of asylum seekers, the increase in people smuggling, the perception that the majority of asylum seekers are 'bogus' and the high costs involved in maintaining asylum seeker processing and support systems. However, UNHCR contends that attacks on the Convention arise out of ignorance of the basic facts of the global refugee problem.

At a major ministerial conference in Geneva in December 2001⁴⁸, the Refugee Convention was strongly supported by 39 countries attending including Australia.

UN Secretary-General, Kofi Annan, said:

"In the minds of many, refugees are equated at best with economic migrants and at worst with cheats, criminals or even terrorists. We must refute this gross calumny."

He described the Refugee Convention as providing "a perfectly good basis for separating those who genuinely need international protection from those who do not." The High Commissioner for Refugees, Ruud Lubbers, concurred.

UNHCR emphasises that identification of refugees for resettlement should be undertaken only as part of comprehensive analysis of refugee situations, in order to determine the most appropriate solution for individuals and groups within the particular refugee population. Decisions on resettlement should be a complementary part of a total response, which focuses on repatriation and local integration⁴⁹.

While continuing to seek international support for the maintenance of the Convention, UNHCR is aware of the need to address the way in which the Convention can work in the

modern world. It is clear that unless the global community comes together to find a new way for the Convention to work in the modern world, there is a real risk that countries which feel under pressure will start withdrawing from the Convention.

(b) Secondary movement

UNHCR has identified 'secondary movement' as the key issue to be addressed.

'Secondary movers' are persons who leave countries in which they have found suitable protection in search of an improved chance of making a refugee claim or a better quality of life. Those who have fled countries like Afghanistan and moved through countries like Pakistan, Malaysia and Indonesia to Australia are 'secondary movers'.

The picture is complicated by the fact that many 'secondary movers' will have valid refugee claims and genuinely fled persecution while others will be 'economic migrants' who commenced moving in the hope of bettering their lives rather than as a result of persecution. The cohort of people on the move will also include those with the clear intention to make false refugee claims, for example people from Pakistan who seek to pass themselves off as persecuted people from Afghanistan.

UNHCR's Executive Committee published a paper in 1989 (Conclusion 58) in an attempt to address the challenge and, in February 2002, at the Bali Conference on People Smuggling, Trafficking in Persons and Trans-National Crime, UNHCR agreed to consider methods of counteracting the problem.

The role of people smugglers, the Tampa incident and the aftermath of 11 September have combined to make secondary movement the focus of major concern in the Asia-Pacific.

'Secondary movement' needs to be understood in the context where opportunities for having claims assessed and resettlement opportunities made available are limited in countries of first asylum.

For example, in Pakistan, UNHCR was only able to process 2,463 claims in 1999 and was only able to effect resettlement of 1,800⁵⁰. Australian processing could only be accessed in Islamabad where five people used to do processing but that number was cut to one in view of security concerns⁵¹. The Islamabad post was closed from September to December 2001. Recent media reports indicate that UNHCR had 'given up' referring hardship cases to Australian authorities in Pakistan as it was too slow in processing them. In total, the High Commission in Islamabad issued only 109 humanitarian visas in 2000-01⁵².

In addition to the lack of access to processing and consideration for resettlement, asylum seekers in countries of first asylum may not be adequately protected because of the ability of their persecutors to cross land borders and harass people in refugee camps. First asylum countries generally have similar or less resources than countries of origin and are rarely in a position to meet basic, let alone specific, needs of asylum seekers. A lack of educational and employment opportunities are other important factors contributing to secondary movement.

Additional pressures arise when those fleeing are the most educated. This is often true in relation to Iraqi asylum seekers. Such educated, urban refugees and asylum seekers in first asylum countries tend to have some financial resources and are keen to resume their occupations. Consequently, these people are more likely to engage in further transit.

Once secondary movement has occurred to developed countries, issues arise about processing and return. Given the large burdens many first asylum countries are struggling with in meeting the needs of huge numbers of asylum seekers, it is unsurprising that such countries do little to prevent asylum seekers moving on and often will not take returns of asylum seekers who have gone to developed countries and whose claims have been assessed and rejected.

The result of large scale secondary movement is that developed nations end up spending huge amounts on border security and asylum seeker processing while the undeveloped nations of first asylum continue to struggle to provide appropriate care and protection. The very lack of appropriate care and protection creates pressures for secondary movement and so the cycle continues.

Indeed, Australia spends twice as much each year (\$14 million) on the Refugee Review Tribunal (just one level of the determination process) as it donates to the world's overall refugee effort via UNHCR. The UK currently spends more on dealing with asylum seekers than the entire UNHCR budget⁵³.

UNHCR's annual budget, excluding its activities in Afghanistan as a result of the 'war on terror', is approximately US \$1 billion⁵⁴. This amounts to less than US \$40 per person per year for each person of the almost 20 million persons 'of concern' to UNHCR.

(c) European Union

As European nations are among the most exposed of the developed nations to large people movements and huge numbers of refugee claims, the outcome of the European Council June 2002 meeting in Seville, Spain is worth noting⁵⁵.

Clearly, the European Council recognised that a lasting solution can only be found by working internationally as the Council agreed to develop an EU common policy on "the separate, but closely related, issues of asylum and immigration".

The Conclusions paper states that measures must strike a balance between an integration policy for lawful migrants and an asylum policy complying with international agreements but on the other hand the need to take "resolute action to combat illegal immigration and trafficking in human beings".

The reception capacity of EU member states is seen as important and also the capacity to afford "swift, effective" protection while ensuring abuses of the system are prevented and those asylum seekers whose applications have been rejected are returned to countries of origin as quickly as possible.

The EU recognised that it needs to work with source and transit countries. It specifically determined it needed to promote economic prosperity in source countries to reduce the underlying causes of migration flows and that this would require closer economic cooperation, trade expansion, development assistance and conflict prevention. The EU also recognised that it needs to work with origin and transit countries in joint management and in border control as well as on readmission.

As well as these commitments to source countries, countries of first asylum and transit countries, the EU recognised that a lasting solution would require common standards for asylum seeker processing by the end of 2003. Adopting common procedures would stop secondary movement in order to 'forum shop' for the best opportunity to have a claim assessed as valid.

(d) Australia must lead the world debate

Australia needs to be engaged in and leading the world debate in dealing with the new challenges posed by mass people movement and people smuggling. It is only through global engagement that a long term comprehensive solution can be found. Ad hoc initiatives like the 'Pacific Solution' cannot provide a lasting solution.

Australia has led the world before in solving global refugee issues including leading the debate, which resulted in the Comprehensive Plan of Action to deal with the outflow of boat

people following the Vietnam War. The Plan was agreed at a conference in Geneva in 1989 attended by 76 countries.

The main features of this agreement were:

- The discouragement of 'clandestine departures' with the agreement and assistance of the Vietnamese Government;
- The agreement of 'transit' countries like Thailand, Malaysia, Hong Kong, Indonesia and the Philippines to hold boat people in detention centres or camps while they were processed on the basis of undertakings by Western governments and international agencies to clear camps in the region of their occupants;
- The repatriation of 'non-refugees' voluntarily, with integration assistance funded via the UNHCR, or if necessary involuntarily;
- The introduction of individual assessments of refugee status of people in camps in the region, conducted or monitored by UNHCR; and
- The establishment of real opportunities for people to move to Western countries in order to discourage 'clandestine' departures.

The CPA was not perfect but it did stop boat people who were at the mercy of pirates and drowning at sea and it did provide a way of addressing a refugee crisis which, over the 25 year period it lasted, involved 3 million people.

Of course the situation today is different as a result of the increased scale of people movements, the multiplicity of sources from which people come and the increasing scourge of people smuggling.

But the CPA, the UNHCR discussions on secondary movements, the EU plan and the global dialogue on the Refugee Convention generally all indicate that a long term comprehensive solution for the global problem must include:

Aid:

- Trying through international aid, trade and economic development opportunities to stem people movements from source countries where the movement is generated by endemic poverty, under-development, natural disaster and the like;
- Endeavouring to facilitate conflict resolution in source countries where people are fleeing internal or external conflict;
- Facilitating repatriation to and rebuilding of nations from which people have fled and to which they need to return;

International Support & Agreements

- Increasing support to and reaching agreements with countries of first asylum and transit countries so that they are able to provide better care and protection for asylum seekers, and more able to address further irregular people movement, stop people smuggling and facilitate returns; and

International Processing

- Ensuring that there are harmonised international registration and refugee status determination procedures including identification systems that can track secondary movement and ensure automatic return of secondary movers.

(e) Labor's plan for world wide UNHCR processing

To lead an international debate it is necessary to develop a unique idea to solve a problem and to seek international support for it. Labor has developed a proposal for uniform, worldwide processing to be conducted by UNHCR, and Labor will seek worldwide support for it.

Two of the key reasons that people engage in secondary movement are:

- that their claims cannot be processed in countries of first asylum due to lack of UNHCR and other processing resources; and/or
- they identify that they will have a better chance of having their claims accepted under the processing regimes of developed countries including Australia.

From a humanitarian point of view this generates a crisis because people who have the capacity to keep moving do so even if this means risking their lives in boats. The tragedy of *SIEV X* reminds us how real is the risk of loss of life.

From an equity point of view, this situation is offensive. It is morally indefensible that a woman and her children who sit in a refugee camp in Africa should have less of a chance of being processed and obtaining a positive outcome than an asylum seeker who successfully makes it to the UK through the Channel Tunnel or to Australia in a boat.

From a security point of view, this situation allows trans-national crime in the form of people smuggling to prosper because there is an incentive to get to a developed nation.

From the point of view of a destination country like Australia, it means that it is effectively in a competition with other destination nations to develop and implement the most effective deterrence mechanisms because the country with the weakest deterrence mechanisms will be targeted. This leads to a gross waste of resources in an international competition no-one can win.

From a global point of view, secondary movement and the reactions to it in Western nations is likely to lead to the end of the Refugee Convention if left unaddressed. This means that there would be no mechanism to address the real needs of those who are persecuted.

Labor's solution is for the developed world to resource UNHCR to undertake processing of refugee claims world wide, whether those claims are made in source countries, countries of first asylum, transit countries or destination countries like Australia. UNHCR would process across the globe to the same standards and would be especially resourced to undertake processing in countries of first asylum.

In proposing this policy, Labor would also propose that accompanying mechanisms are developed to hold UNHCR accountable for its processing actions. Most importantly, Labor would insist that Australia must continue to retain the final say on the numbers of refugees and the individuals who would come to Australia for resettlement.

To make such a system work, signatory nations such as Australia would need to continue to accept those genuine refugees who arrive in the country and invoke their protection obligations. UNHCR would be responsible for the identification of such refugees. The signatory nation such as Australia would be responsible for return of non-refugees. However, as the reality of the harmonised world-wide process was recognised, people movement flows generated by the desire to seek a more beneficial processing regime would decrease dramatically, if not cease. As part of the world wide agreement, it would be necessary to get developed nations to commit to making available resettlement places for those processed by UNHCR in countries of first asylum. As unauthorised arrivals and on-shore claims reduce, signatory nations should have capacity to commit such places.

Labor's solution means there will be no incentive for people who have reached countries of first asylum to keep moving. Why keep moving when your chances of being processed and assessed are identical in the country of first asylum to those in any other country you reach?

Labor's solution will deal people smuggling rings a mortal blow. There will no longer be any gain in paying people smugglers thousands of dollars when the processing system and result is the same in every country.

Labor's solution will solve the moral dilemma posed by the fact that people have different opportunities depending on where in the world they are. Under Labor's solution, the woman and her children in the African refugee camp would have exactly the same chance as an asylum seeker in a developed nation.

Labor's solution would reduce the resources the developed world must spend on processing and deterrence mechanisms. The ultimate deterrence would be in place in that an asylum seeker would get no advantage by getting to a developed country. The excessive sums of money now used for processing could go to the more productive pursuits of aid to stem people movement, support for countries of first asylum, support to UNHCR to undertake processing and financing resettlement places and settlement services.

In the remainder of this Chapter, these issues of aid, support to first asylum countries and support to UNHCR are explored. Labor's position on each is designed to demonstrate to the world Australia's good faith in working with the world to seek a long term comprehensive solution to the issues of asylum seekers and refugees.

3. Aid to source countries and countries of first asylum

(a) Aid and people movement

Of the almost 20 million people of concern to UNHCR, most have not fled persecution but have fled war, famine, natural disaster or poverty. Addressing people movement of this nature is a question of conflict resolution and of aid.

People who have fled and reached countries of first asylum may keep moving because their humanitarian needs are not being met. Once again, this is a question of aid.

Host populations in countries of first asylum may rightly resent the extra burden placed on their limited resources by large numbers of displaced people. Stabilising the situation in countries of first asylum also requires the consideration of the aid needs of the host population.

In the global debate about minimising secondary movement, it has been suggested that asylum seekers in countries of first asylum be subject to an identification system. The identification system would then become the foundation of a returns system for secondary movers. An asylum seeker who engages in a secondary movement could be identified and returned without further processing. Clearly, such a system requires the active co-operation of the first asylum countries, which is unlikely to be gained in the absence of additional aid assistance.

(b) Howard Government aid cutbacks

Under the Hawke and Keating Labor Governments the percentage of Gross National Product devoted to overseas aid reached 0.5% at its height and 0.32% at its lowest⁵⁶. While some criticised the Keating Government for allowing aid levels to fall, Labor's record still stands in contrast to that of the Howard Government.

Under the Howard Government aid has plummeted to 0.25% of GNP. The monies available to AusAID's managed aid program has decreased by 6.3% in real terms, funds to UN agencies have decreased by 42% in real terms and funding to NGOs has decreased by

17.2% in real terms. The 2002-2003 Budget featured an almost \$35 million decline in Australia's contribution to multilateral aid agencies⁵⁷.

The decreases in funding to multilateral agencies and NGOs at the expense of direct government to government allocations fits with the shrill condemnation of UN actions from Howard, Ruddock and Downer over the years. Indeed, the Howard Government's trumpeting of its increased aid credentials is all about cynically mixing funds allocated for poverty alleviation, sustainable development, improved governance and the like with funds for off-shore processing of asylum seekers.

The Howard Government's record stands in stark contrast to that of many OECD countries which have recognised that aid is an important tool in fighting the poverty that can lead to fundamentalism and terrorism as well as people movements.

European countries have set a 2006 goal of 0.39% of GNP going to aid. Even the USA has increased its aid donations. Last financial year, Australia fell from 12th to 14th out of the 22 countries on the OECD's aid donor list⁵⁸. Given the above trends, Australia will fall to the bottom of the list in just a few years.

(c) Labor's plan for aid

Labor will recognise the importance of aid to source countries in addressing the causes of why people start to move. Consequently, Labor will seek to lift Australia's aid effort aimed at poverty alleviation, economic development, conflict resolution and governance issues in likely source countries.

Labor will recognise the need to assist first asylum countries not only with monies to meet the immediate needs in refugee camps, but also with monies for poverty alleviation, economic development and governance in respect of the host community. Such additional aid should be based on securing outcomes such as having countries of first asylum act to minimise secondary movement and to accept returns of secondary movers.

Obviously, the question of aid monies needs to be assessed in the budget context against other priorities, but Labor affirms its traditional commitment to supporting aid efforts.

4. UNHCR

Labor believes that working more effectively with UNHCR is essential to achieving a long term comprehensive solution to the problem the world faces with asylum seekers and refugee issues.

With 289 offices in 123 countries, UNHCR is uniquely placed to deal with irregular people movement. The UNHCR also works closely with international NGOs such as the IOM in implementing protection and resettlement assistance to refugees.

(a) The Howard Government's cuts to UNHCR

Instead of working smarter with UNHCR, the Howard Government has slashed core funding to UNHCR from around \$14 million per year to just \$7.3 million in the current financial year, a budgetary cut of 50%.

An additional \$14.3 million is provided for 'special programs' and the Minister for Immigration, Multicultural and Indigenous Affairs argues that this represents an increase in funding levels for UNHCR. However the additional \$14.3 million is available only for those programs approved by the Minister, a situation that reduces the capacity of UNHCR to genuinely respond to international refugee issues on the basis of previously established criteria and needs.

Even prior to this cutback in terms of direct funding to UNHCR, Australia sat at 14th in terms of UNHCR donor nations.

While slashing funding, the Howard Government has publicly criticised the UN and its agencies, but offered no constructive proposals for improvement and reform. This may be interpreted as playing short term domestic politics, but in the long term it makes no sense to undermine the international agencies that are fundamental to achieving a lasting global solution.

(b) Labor's plan for UNHCR

Obviously, Labor will increase funding to UNHCR if Labor achieved its international objective of having UNHCR undertake processing world wide.

However, in the interim and as a show of good faith, Labor will support UNHCR through additional funding and political support.

Specifically, Labor will increase Australia's general contribution to UNHCR to \$25 million per annum. Labor will abolish the special programs funding introduced in the 2002-03 Budget.

5. International co-operation

In terms of international co-operation, the Howard Government's approach has been no more than ad hoc, piecemeal responses.

Such an approach is completely at odds with the realities of the transnational security threats in the modern world. The problems of people smuggling and irregular people movement do not end or begin at Australia's maritime borders. They are international problems requiring international solutions. If the challenges of today are to be effectively dealt with, governments must commit themselves to action at both the national and international levels.

(a) The Howard Government's record - too little, too late

Prior to the *MV Tampa*, the Howard Government did not view the area of asylum seekers and refugees as a high priority.

Consequently, little diplomatic effort was put into securing international agreements in the early years of the Howard Government. To the extent efforts have been made, the Howard Government has focussed on bilateral mechanisms rather than multilateral initiatives. In doing so it has ignored the historical fact that the most successful agreement in the region for dealing with people movement in recent years, the 1989 Comprehensive Plan of Action, was a multilateral agreement.

It was not until early 2000 that Australia negotiated the main elements of what is now called a 'co-operative regional agreement' with Indonesia. These arrangements involve four key players:

- the Indonesian Government, both at the central and provincial levels including the police and the military (TNI);
- their Australian counterparts;
- UNHCR; and
- the IOM.

Under these arrangements, Australia funds the total costs of the UNHCR and IOM in Indonesia. Australia also provides training and equipment to Indonesian police and immigration officials in order to strengthen Indonesia's capacity to deal with the flow of irregular migration⁵⁹.

These arrangements between Australia and Indonesia have been constrained by several factors. Despite the formalised bilateral agreement, Indonesia's capacity to deal with irregular people movements both inside and outside its borders remains limited. Jakarta has not, and probably will not, accord the people smuggling issue a high priority.

In addition, Indonesia has no capacity to intercept unauthorised arrivals in Indonesian waters. Australia's offer in the 2002-03 Budget to provide five small patrol craft will help, but given Indonesia's geographic size and coastline, such capabilities will need to be supplemented with a much stronger commitment from the Indonesian government if they are to be successful.

The Howard Government has stated its intention to extend the regional co-operation agreement model to other countries. However, nothing has been achieved to date. According to media reports, attempts have been made to negotiate a similar agreement with Cambodia, but so far there has been little progress.

Other countries where regional co-operation agreements would be useful include Malaysia, Vietnam, Bangladesh and Sri Lanka. However, there is no indication that the Howard Government has been seeking to negotiate individual agreements with these countries.

Finally, post *Tampa*, the Howard Government moved towards a regional dialogue on people movement through the Ministerial Regional Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime in Bali, on 26-28 February 2002. Despite the Howard Government creating high expectations for the Conference, the outcomes were modest. The meeting did agree to a number of measures, including information and intelligence sharing arrangements, co-operation between law enforcement agencies, co-operation on visa systems and public awareness campaigns. However, on the key question of strengthening domestic laws in Southeast Asia to make people smuggling a crime, little or no progress was made.

Nor was any attempt made by the Howard Government to use the Bali conference to force greater adherence to the international treaties and protocols on refugees and transnational crime. The statement released at the end of the Conference referred to international legal instruments such as the Bangkok Declaration on Irregular Migration and the United Nations Convention Against Transnational Organised Crime, but merely encouraged participants to 'consider the benefits of signing and ratifying' these instruments.

This has been a major policy failure. Nearly a year after the Bali conference, Indonesia has still not ratified the 1951 Refugee Convention and has yet to implement domestic legislation to make people smuggling a crime.

The Commonwealth Heads of Government Meeting (CHOGM) in Coolom in March 2002 represented another failed opportunity to have more countries in the region sign on the various international agreements relating to refugees. Despite the fact that seven of the eight countries in our region that are not signatory to the Refugee Convention were present at the CHOGM meeting, the Howard Government refused to include this issue on the agenda. The eighth country is Indonesia.

(b) Labor's plan for the region

Strengthen bilateral agreements

There is a clear need for individual countries and the Southeast Asian region as a whole to respond in a more co-ordinated and effective way to deal with this issue. In particular, there needs to be a complete clamp down on people smuggling activities. This will involve greater co-operation between regional law enforcement, security and intelligence agencies. Countries such as Malaysia and Indonesia also need to implement much tighter restrictions

on people movements from the major source countries of Iraq, Iran and Afghanistan. Some positive steps have been taken in recent months, but more needs to be done.

Work through regional institutions

In regional terms, the national and international capacity of Southeast Asian states to deal with irregular people movement remains inadequate.

One suggestion that has emerged in Australia is the idea of establishing a regional surveillance centre to track and provide information on irregular people movements⁶⁰. This could provide an early warning mechanism and assist regional law enforcement authorities to apprehend criminals associated with the people smuggling trade.

The ASEAN Regional Forum should be giving more systematic attention to the issues of irregular people movements in the region and the connection between people smugglers and other transnational crime.

Better coordination of international efforts

Internationally, more attention needs to be devoted to establishing regulatory forums that are able to coordinate and integrate multilateral responses in a fully comprehensive manner.

While Labor is seeking to lead the international debate on a global solution on people movement, it will also focus on achieving positive change in our region.

A new comprehensive plan of action for the region must include the following elements:

- A sustained effort to have more countries sign on to the 1951 Refugee Convention;
- Work through the ASEAN Regional Forum and APEC working groups on transnational crime;
- The creation of a specific regional people smuggling taskforce under the auspices of the ASEAN Regional Forum; and
- Follow-up to the Bali conference with more concrete proposals for regional institution and capacity building.

6. Ambassador for people smuggling and people trafficking

(a) Ambassador for People Smuggling

One outcome of the Bali conference in February 2002 was the appointment by the Howard Government of an Ambassador for People Smuggling Issues. Based in the Department of Foreign Affairs & Trade, the Ambassador is responsible for promoting a coherent and effective international approach to combating people smuggling, particularly in the Asia-Pacific region, and to assist as appropriate in the negotiation of high-level return, readmission and resettlement arrangements. The Ambassador's other brief is to 'follow up' on the Bali conference.

Labor fully supports the work of the Ambassador and in government will ensure appropriate funding and support is given to the position or its successor so that co-operation on people smuggling is firmly at the top of the international and foreign affairs agenda for all governments in the region.

(b) People trafficking

Like the rest of the world, Australia is exposed to the trafficking of women and girls for the purposes of prostitution or sexual servitude. It is also possible for people to be trafficked for other sorts of exploitation, such as being used as servants or labourers.

The 1996 *Parliamentary Report into the Trafficking of Women into the Australian Sex Industry* explored the nature of this problem. It recorded a number of instances where women, who were in Australia illegally, were forced to work as sex workers to repay debts to the people who had brought them to Australia. The report noted that in this environment the women were:

- in an un-empowered employee relationship with the brothel owner and subject to varying degrees of control;
- under pressure to service as many customers as possible in a short time;
- more likely to be coerced into accepting demands from clients to engage in unsafe sexual practices;
- unable to leave of their own free will as their passports are usually held as security to pay off the debt;
- unable to access or control any of the money they earn; and
- often subject to working and accommodation conditions which are unacceptable on health and safety grounds by Australian standards.

The *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* created offences against people who recruit, organise and profit from people engaged in prostitution in conditions of slavery or sexual servitude. The penalties under the Act range from 17 to 25 years imprisonment for slavery offences, and 15 to 19 years imprisonment for sexual servitude offences. There are also various offences associated with deceptive recruiting for sexual services and these range from 7 to 9 years imprisonment.

However, enforcing laws of this nature is always difficult given potential witnesses are fearful of reprisals against themselves or their families.

Anecdotal evidence suggests that the majority of illegal sex workers in Australia have entered on a visitor or student visa from South-East Asian nations, although recent media reports suggest the existence of a major illegal immigration/sex worker trade between Russia and Australia. Australia is seen as a 'soft touch' country for young Russian women seeking either a rich husband or lucrative work as a prostitute.

(c) Labor's plan – Ambassador for People Smuggling and People Trafficking

While Labor accepts that the problem is comparatively small in Australia, one sexually exploited woman or girl is one too many. Consequently, Labor will put a focus on defeating people trafficking by mandating the Ambassador for People Smuggling to also deal with people trafficking issues. The Ambassador will be asked to work to develop relationships with likely source countries of trafficked persons to stem the potential flow of people.

7. Conclusion

Labor will better protect Australia and lead debate internationally by advocating one world wide processing system. One world wide processing system would be the ultimate deterrence to people smuggling and forward movement. Why pay a people smuggler to get you to a developed nation if, when you get there, you have no better chance of your claim being accepted? One world wide processing system would also ensure equity with the most disadvantaged waiting in refugee camps having exactly the same chance of being resettled as an asylum seeker who arrives in a developed country.

By signing the Refugee Convention, Australia committed itself to not sending a person back to a situation where they could be killed, tortured, unjustly imprisoned or persecuted in some other way. Meeting this obligation fits in perfectly with Australian values.

Labor will ensure that Australia does more through aid and support for UNHCR to assist those who live, and often die, in refugee camps around the world. Labor will also focus on eradicating people trafficking for the purposes of sexual or other exploitation as well as people smuggling.

These initiatives form part of Labor's long term comprehensive solution.

Chapter Four -

Restoring community faith in the immigration program

1. Introduction

Labor understands that Australians want a managed and fair refugee program. Labor understands the concerns of Australians and shares their view that unauthorised boat arrivals are the worse of all possible outcomes both from Australia's point of view, as a nation managing its borders, and from the point of view of the asylum seekers who risk, and sometimes lose, their lives.

Labor will lead a rational community debate on asylum seeker and refugee issues while advocating its policies to protect Australia and protect the Australian way.

Unlike the Howard Government with its 'children overboard' conspiracy and continuous vilification of asylum seekers, Labor does not believe it is necessary to lie to protect our borders. Labor will engage in public debate which is factual and free from vilification.

Labor will lead public debate on immigration and refugee issues to ensure that all Australians have access to the truth in this area so that they can form their opinions in an environment free of bias, spin and emotionalism. Labor believes this is the role of the national government and the Howard Government has abrogated its duty.

2. Australia doing its fair share

(a) UNHCR - offshore places

Australia currently makes 4,000 places available each year for the resettlement of refugees who are offshore. UNHCR identifies those most in need of these places.

In practice, UNHCR first negotiates with resettlement countries for places, then identifies and recommends groups of people to fill these quotas. In the case of Australia, in the context of the annual consultations on the program, UNHCR makes recommendations with respect to:

- priority regions, eg the Middle East, and the downgrading of others, eg the former Yugoslavia;
- priority groups, eg Sudanese, Sierra Leoneans, Rwandans and Burundians in Tanzania and Kenya, Ethiopians in the Sudan;
- particular groups within refugee populations, eg women in Afghanistan, Bosnian and Croatian torture and trauma victims, Ethiopian women, children and families, and groups facing discrimination within the camps;
- the identification of refugees in centres or camps who have been there for long periods and who have little prospect of repatriation or successful local integration; and
- allocations within the quota offered, eg 300 Sudanese, 400 Ethiopians, 400 Afghans, 150 Burmese in Thailand.

Priority is given to emergency and to torture and trauma victims referred by UNHCR and ten percent of places under the refugee category are reserved for women at risk.

The Australian Government pays travel and other costs, except where individuals have sufficient means.

Australia retains a role in assessing cases referred by UNHCR given the numbers needing resettlement always exceed available places. Australian immigration officials satisfy themselves that:

- the individual is a refugee who has been subject to 'persecution';
- there are compelling reasons for resettlement;
- there is no other suitable durable solution;
- permanent settlement in Australia is appropriate, and not contrary to the interests of Australia; and
- the individual meets public interest criteria of health (these can be waived) and character.

In practice, decision-makers make decisions about relative need over and beyond these criteria, because of the limited number of visas available.

(b) Special humanitarian program

In addition, to taking the 4,000 refugees, identified by UNHCR, Australia takes offshore refugees under its special humanitarian program, which is for people who are in situations of 'gross violation of human rights', and who have family and other strong links with Australia. These applications must be supported by people resident in or organisations based in Australia. Sponsors are required to meet some costs.

The current number of places available per annum is 8,000, less the number of places which have been filled by asylum seekers who have come to Australia and made successful protection applications.

In relation to the refugee places and the special humanitarian places, the final decision is made by Australian immigration officials. There are no appeals from rejection but a person rejected may reapply.

(c) Cutbacks under the Howard Government

As detailed above, under the Howard Government refugee intake numbers have been fixed at 12,000 per year, of which 4,000 are dedicated offshore places with the balance of 8,000 being made up of asylum seekers in Australia whose claims succeed and the special humanitarian offshore category. Successful on-shore refugee claims are counted against the special humanitarian numbers.

In a cruel trick in this year's intake, Minister Ruddock has announced that the places taken by those on Manus Island and Nauru who make successful claims will be deducted from the 4,000 dedicated offshore places⁶¹. These places are set aside for the most disadvantaged refugees living in offshore camps. Minister Ruddock constantly refers to these cases as the most deserving but in complete contradiction of his rhetoric has allocated some of the places available to the most needy to the people on Manus and Nauru who are, in his lexicon, 'queue jumpers'. Had the asylum seekers on Manus and Nauru been processed in Australia, places would not have been taken from the dedicated offshore places but from the special humanitarian offshore class.

(d) Labor's plan for Australia's refugee intake

Labor understands the Australian way is to offer a fair go and a helping hand to those in need. In return for this generosity, Australians seek to be assured that their generosity is going to the deserving and that they are not being ripped off. Australians also understand that this nation has been built on and enriched by immigration. Having built a peaceful, multicultural nation, which has welcomed over six million migrants, Australians will continue to welcome newcomers who are invited to our land. However, Australians naturally fear any sense of loss of control over who comes to this nation.

Labor believes that the policy detailed in this document will protect Australia and reassure Australians that every conceivable step is being taken to ensure an orderly intake of refugees into this nation.

Labor will aim to lead debate internationally and restore community faith locally in the refugee program. Unlike the Howard Government with its 'children overboard' conspiracy, Labor does not believe it is necessary to lie to protect our borders. Labor will engage in public debate, which is factual and free from vilification.

In these more positive circumstances, Labor will consider increasing Australia's humanitarian program, which under the Howard Government, has fallen from over 18% of our immigration program to just over 10%. This increase will be achieved within current immigration intake numbers.

However, Labor will only increase the humanitarian program to the extent that communities in regional Australia volunteer to have refugees resettled in their community. Any increased intake of refugees will be part of Labor's population dispersal policy designed to boost regional areas while taking the pressure off over-crowded places like the Sydney basin. Labor will support such communities with appropriate services.

3. Addressing the Howard Government's asylum seeker secret

(a) The secret

The Howard Government has deliberately created the impression that all asylum seekers are detained. This is not true. It has politically suited the Howard Government to focus on those people arriving in an unauthorised manner by boat and claiming asylum, rather than acknowledging the fact that these claims are a small percentage of total refugee claims in Australia. Again, this is an example of the Howard Government's reckless disregard for the truth at best, or deliberate vilification at worst.

What the Howard Government never focuses on is the fact that the vast majority of asylum seekers live peacefully in the Australian community. Total refugee claims in recent years in Australia have numbered roughly 13,000. Between 1999 and 2001, Australia saw approximately 4000 arrivals by boat per year and approximately 9000 arrivals by air per year⁶². What this demonstrates is that three quarters of people making claims per year are allowed to live freely in the community on a bridging visa while their claims are assessed.

Labor acknowledges that the majority of asylum seekers are living peacefully in the community. Unlike the Howard Government, Labor will not try to hide this fact by concentrating on attacking those who arrive by boat.

(b) The Howard Government's double standards – politics, not good policy

Asylum seekers who arrive in Australia legally, for example on a tourist visa, and who subsequently make a refugee claim are not detained.

For those asylum seekers who legally arrive with tourist or other visas, the Howard Government allows them to remain in the community on the basis that identity, health and security checks were undertaken at the time their visa was obtained. However, the checks made on the issuing of a tourist visa are much less rigorous than the identity, security and health checks applied to unauthorised boat arrivals. Indeed no real security check is performed when persons are issued visas for less than a twelve month period. Just as security checking on boat arrivals claiming asylum should begin as early as possible, Labor believes that those asylum seekers in the community must undergo the same checking beginning when they arrive in Australia and make a claim. It is only fair from the perspective of equity and good public policy that anyone making a claim is, as far as possible, treated the same regardless of their method of arrival.

It should also be noted that the number of successful refugee claims by those who arrive lawfully is much lower than successful refugee claims made by detained unauthorised arrivals. Those detained are, in the main, of Iranian, Iraqi or Afghan nationality⁶³. Approval rates have been quite high for nationals of these countries. Obviously, recent changes in Afghanistan have had the effect of drastically dropping the success rates. Those arriving by air and claiming asylum are usually nationals of China, Pacific island countries or East Asian countries. Their claims are much more likely to be found wanting.

There is some evidence that the Howard Government has been quite lax in removing failed asylum seekers from the community. The fact that the Howard Government is so punitive in relation to boat arrivals but lax on matters relating to legally arrived asylum seekers shows that their motivation has been political advantage, not good public policy.

(c) Conditions for asylum seekers in the community

Since 1 July 1997, asylum seekers in the community have had limited access to work rights. No work rights are available to people who have been in Australia for 45 days or more in the 12 months before their refugee claim is made. They are entitled only to a bridging visa with a 'no work' condition attached.

The 45 day time limit also applies in relation to access to health services. To be eligible to work and for Medicare and Pharmaceutical Benefits, asylum seekers who arrive legally must make a refugee claim within 45 days of arrival.

Asylum seekers who arrive legally but make a refugee claim outside the 45 day period are not permitted work rights and have no rights to Medicare, schooling for children or any other form of benefit. The only assistance made available is a limited form of benefit, the Asylum Seeker Assistance Scheme (ASAS), funded by the Commonwealth and managed by the Red Cross.

In 2000-01, there were 2691 people claiming asylum who received ASAS payments. ASAS averaged 89 per cent of the Centrelink special benefit. For example, a single male over 21 would receive approximately \$400 per fortnight, while a couple without dependents is paid approximately \$600 per fortnight. In 2001, the scheme cost the taxpayer a little over \$11 million⁶⁴. People eligible for this payment are usually in the primary stage of having their claim processed, although some in hardship may continue to receive it when appealing to the RRT. In that same period the Red Cross assisted an additional 1475 'community-based' asylum seekers who were ineligible for assistance under the scheme⁶⁵.

Asylum seekers not entitled to Medicare, work rights or ASAS may be further disadvantaged as some state health departments charge clients without Medicare for inpatient and outpatient care. Assurance of payment is required before treatment is provided⁶⁶.

Charities and churches are under enormous strain in supporting these asylum seekers. Such charities and churches try to source medical support from doctors willing to donate their services, free accommodation and donations to enable basic handouts to be given for food and other essentials. For example, asylum seekers with no access to Medicare and no work rights must present at DIMIA for compliance reasons up to 3 times a week.

Justice for Asylum Seekers, a Melbourne coalition of groups, estimates that the purchase of Met transport cards for the asylum seekers it supports costs more than \$1,000 every month in total⁶⁷. In Melbourne, the Uniting Church provides assistance for food and transport and referral for church housing and pro bono medical treatment. In 2001, the church assisted 93 clients at a cost of \$200,000 for the year⁶⁸.

(d) Labor's plan

Labor will remove the Howard Government's double standards and better protect Australia by ensuring that:

- Asylum seekers who arrive legally but who have not been subject to comprehensive security assessments in order to obtain a visa are subject to such assessments immediately on making refugee claims; and
- Asylum seekers whose claims have failed are removed from Australia.

Labor will also seek to lift the burden on charities, churches, and the voluntary sector generally. Labor in government will consult charities, churches and the Red Cross to find a way of lifting the burden off them and getting appropriate arrangements for asylum seekers in the community.

(e) Regions which want refugees

Labor aims to restore community faith in the immigration program and particularly the humanitarian program by reassuring Australia it is fair and being properly managed. In these more positive circumstances, Labor will consider increasing Australia's humanitarian program, which under the Howard Government has fallen from over 18% of our immigration program to just over 10%. This increase will be achieved within current immigration intake numbers.

However, Labor will only increase the humanitarian program to the extent that communities in regional Australia volunteer to have refugees resettled in their community. Any increased intake of refugees will be part of Labor's population dispersal policy designed to boost regional areas while taking the pressure off over-crowded places like the Sydney basin.

Chapter Five -

Fast, fair and transparent processing

1. Introduction

Labor's long term comprehensive solution addresses better protecting Australia, border security, the international framework and the domestic policy issues of refugee intake, processing and detention. Addressed in this Chapter are Labor's plans for processing for unauthorised arrivals and lawful arrivals prior to the time Labor achieves its long term goal of UNHCR doing processing worldwide.

Many Australians wonder why processing of refugee claims takes so long and people are detained for such a long period. For the asylum seekers involved, slow processing creates psychologically corrosive insecurity which may lead to a degeneration of their physical well-being. This problem can be significantly exacerbated if people have been earlier exposed to torture and trauma.

It is in Australia's interest and the interest of individual asylum seekers that processing is fast, fair and transparent. Such processing means those who have a genuine claim can quickly move to rebuilding their lives while those who are not can be promptly returned. Fast, fair and transparent processing would be less costly. Fast, fair and transparent processing means detention time can be minimised, which is best for the individuals involved and will lead to less disruption in detention centres and cost savings.

As detailed in Chapter Three, as part of Labor's long term and comprehensive solution, Labor will seek global agreement for the developed world to resource UNHCR to undertake processing of refugee claims world wide, whether those claims are made in countries of first asylum, transit countries or destination countries like Australia. UNHCR would process across the globe to the same standards and would be especially resourced to undertake processing in countries of first asylum.

2. Processing of refugee claims

(a) Current situation

Currently, Australia effectively processes refugee claims in four different contexts as follows:

- Offshore
The claims of asylum seekers are processed by UNHCR and Australian officials as detailed in Chapter Three with access to the refugee visa class or special humanitarian category;
- 'Pacific Solution'
Claims of asylum seekers in PNG and Nauru are being processed by UNHCR and DIMIA in the same way those claims are processed by UNHCR in refugee camps for access to the refugee visa class. There is no equivalent consideration of non-refugee special humanitarian needs other than by an exercise of Ministerial discretion.
- Unauthorised arrivals
Claims of unauthorised arrivals to Australia, who are detained, are processed by DIMIA in relation to a refugee visa class, specifically the Temporary Protection Visa, with a right of appeal to the Refugee Review Tribunal. There is no equivalent consideration of non-refugee special humanitarian needs other than by an exercise of Ministerial discretion.

- Lawfully arrived asylum seekers
Claims of asylum seekers who arrive in Australia lawfully and then make refugee claims are processed in the same manner as detained unauthorised arrivals but such persons are not detained. Once again, there is no equivalent consideration of non-refugee special humanitarian needs other than by an exercise of Ministerial discretion.

(b) Unauthorised arrivals – sources of delay in processing

Delays in the initial entry interview

Unauthorised arrivals can come by air or boat or as ship stowaways. It should be noted that people can present unauthorised at air and seaports for a variety of reasons ranging from a genuine documentation error up to a deliberate attempt at identity fraud. Many are not making claims for protection as a refugee. It is therefore very important to conduct a first interview, known as an 'initial entry interview' to determine why the person has presented unauthorised. Such an interview can be conducted immediately.

The situation is different when a boat carrying a number of people arrives. In that case, DIMIA sends teams of officers to the relevant detention centre to undertake the 'initial entry interview'.

Each case is then referred to a Senior Executive Service officer in Canberra, usually at First Assistant Secretary level, to consider whether the claims made engage Australia's obligations under the Convention. This is known as being 'screened' in or out. The vast majority of applicants are 'screened' in at this stage. This screening in or out process can be very slow when there are large numbers of arrivals as only one or two SES officers conduct the assessments.

The limited number who are screened out are then held in separation detention notionally for removal from Australia as soon as practicable. In reality such returns cannot generally be effected without further processing work and numbers of people originally marked as screened out ultimately end up being screened in and fully processed.

The bottleneck for the assessment of the 'initial entry interview' causes delay and generally nothing else is done about processing during this delay period.

Multiple interview rounds causing delay

As indicated in Chapter Two, an unauthorised air or seaport arrival who seeks to make a refugee claim is often released into the community to pursue that claim. The processing of these claims and claims of asylum seekers who arrive lawfully then starts with the submission of a written application for protection, generally with the assistance of qualified migration agents.

For asylum seekers who arrive by boat, a taskforce of Onshore Protection officers then travel to the detention centre to commence the protection visa assessment process for those applicants who have been screened in. For a boat of 300 people, for example, 6-8 experienced case officers would be despatched.

Applicants and their advocates report that generally a number of interviews are conducted with great weight put on slight differences in what is ascertained at each interview.

Delays then occur as a result of the multiple interviewing rounds and the time delays in between getting Onshore Protection officers to move through detention centres.

Delays with security and character checking

Until 1999, ASIO did not begin security checks on asylum seekers until DIMIA had granted them a protection visa. When faced with a larger number of boat arrivals, ASIO began their

checking at an earlier point. However, character checking must still be done by DIMIA before a detained asylum seeker is released into the community. Character checking involves getting police clearances from nations through which the applicant has travelled.

The fact that security checking and character checking is delayed can result in a further detention period. Indeed, there have been examples of genuine refugees waiting several more months in detention while security and character checking is completed.

The lack of security and character checking for those not found to have valid claims is also problematic. It is in Australia's interest to know if any detained person is a security concern.

DIMIA processing delays

An asylum seeker does not get any ability to seek independent review until he or she has received a negative primary decision from DIMIA. Consequently, if DIMIA is delaying processing either deliberately or through incompetent processing, there is no external administrative scrutiny or pressure or remedy to resolve the problem.

Delays at the Refugee Review Tribunal

The RRT has speeded up case processing in recent years. However, the RRT's work can still be slow in some areas. It is important to note that the RRT is also dealing with the claims of asylum seekers in the community, some of which are manifestly unfounded. For example, refugee claims have been made by persons from Sweden and Canada. The RRT does not have any really expedited decision making track for dealing with such claims.

RRT statistics indicate that of the 4,648 community (non-detention) decisions the Tribunal made in the 2001-2002 financial year, 2,014 (43.3%) are recorded as having the rejection of the claim "affirmed - no hearing"⁶⁹. This means the asylum seeker failed to present at a protection hearing and that gives an idea of the strength of their claims.

This large non-attendance rate indicates that in some cases refugee claims are no more than devices to extend a stay in Australia. Currently, the RRT lacks the power to immediately dispose of claims where the applicant does not attend the hearing and writing full decisions in such cases adds to workload and the delay faced by more meritorious cases.

Appeal delays

If DIMIA rejects an applicant's claim then appeal processes commence. For anyone who arrived in Australia and made a refugee claim before September 2001, the range of available appeals is:

- Refugee Review Tribunal
- Federal Court
- Full Federal Court
- High Court
- Ministerial intervention

It can take many years to exhaust these appeals, with about 16% of applicants seeking a judicial review of an RRT decision⁷⁰.

Following the enactment of the privative clause in 2001, the exact nature and extent to which appeals survive is uncertain⁷¹. It may be that the privative clause has been effective to exclude all appeals except a limited form of appeal to the High Court. There are a number of cases before the courts, which will determine whether the privative clause has achieved this result.

It should be noted that as a result of politicised and short term appointments the RRT is now viewed by many lawyers and others who work with asylum seekers as not independent⁷².

Ministerial discretion delays

If an asylum seeker's claim to be a refugee is rejected, he or she may ask the Minister's permission to remain on the basis he or she has a compelling humanitarian claim. For example, someone who is likely to suffer torture if returned, but cannot link this fear of persecution to the Refugee Convention because their situation is part of the context of a civil war.

The Ministerial discretion is non-compellable and non-reviewable. There is no external scrutiny and no ability to force the Minister to consider matters in a timely way. Consequently, asylum seekers can remain in detention for many months waiting for the Minister to consider the case.

3. Labor's interim plan for processing

(a) Christmas Island

Christmas Island, Ashmore Reef and Cocos (Keeling) Islands are in the excised zone and Labor will maintain these excisions given their proximity to the Indonesian mainland.

The Howard Government has committed \$219 million for the construction of a 1,200 person detention facility at Christmas Island. The first stage (400 beds) is expected to be completed by late 2002 and the entire project completed by the end of January 2003⁷³.

Labor will designate this facility as the prime asylum seeker processing and detention facility for asylum seekers intercepted by the Coastguard. Labor supports the Christmas Island community being treated with respect and having real responsibilities in the governance of their community. Labor will work in a co-operative way with the community and ensure that it has a real say in all matters relating to the asylum seeker processing and detention facility. Labor will ensure the community enjoys the employment, training and economic benefits associated with the facility. Labor will monitor the facility's ongoing social, economic and environmental impacts.

On Christmas Island, Labor will process the refugee claims of asylum seekers in the same way such claims are processed in overseas refugee camps. An expert committee, called the Asylum Seeker Claims Processing Review Committee and comprised of persons with legal expertise and expertise in the way claims are processed in refugee camps overseas will oversee the development and functioning of the processing regime. The processing will be fast, fair and transparent with 90% of cases determined in 90 days.

Those found to be genuine refugees will be settled in Australia and those whose claims fail will be returned quickly.

Under the oversight of the expert committee, specially trained DIMIA officers will assess refugee claims on the same basis such claims are assessed in offshore refugee camps. DIMIA officers will undertake the assessments done by UNHCR and DIMIA officers overseas and will ascertain whether an individual is a refugee under the Refugee Convention or has a compelling special humanitarian claim. An asylum seeker who gets an adverse decision will be entitled to have that decision reviewed.

This will be a fast, fair and transparent processing model giving the asylum seekers involved the same opportunity to access resettlement as is available to asylum seekers in overseas refugee camps. This approach achieves equity between the groups and will act to deter unauthorised arrivals because there is no incentive to forward transit when processing regimes are the same.

This model also removes the delays and potential for unfairness involved in the use of a non-reviewable Ministerial discretion as that discretion is substituted by an independent assessment of any compelling special humanitarian claim.

Labor will also fund appropriate non-government agencies to provide case workers to work with asylum seekers to explain the process being undertaken and to manage expectations. Overseas evidence suggests that case worker support facilitates managing processing and detention issues, and also facilitates achieving effective return arrangements in the case of a negative decision. Asylum seekers will be entitled to proper interpreting services when preparing claims.

(b) *Faster, fairer and transparent processing*

Even with a Coastguard better protecting Australia, there will be a need for a fast, fair and transparent processing system on the Australian mainland to deal with asylum seekers who arrive lawfully and make a claim, and unauthorised airport arrivals and stowaways. The current processing arrangement can be significantly amended to enable much faster processing.

Labor has a plan to make Australia's processing arrangements faster, fairer and more transparent. Fast, fair and transparent processing means genuine refugees will be identified quickly. Those whose claims fail will be sent home more quickly. Labor believes that under its model an independent tribunal will be able to determine 90% of claims within 90 days.

Labor believes that such fast, fair and transparent processing can be achieved by abolishing the Refugee Review Tribunal and replacing it with a new Tribunal to be called the Refugee Status Determination Tribunal (RSDT).

Under Labor's model the RSDT will make the primary decision as to whether or not an asylum seeker has a valid refugee claim, not DIMIA. This means from the moment that an asylum seeker makes a claim, the RSDT will be able to aggressively case manage and impose deadlines on DIMIA.

The RSDT will be in charge of the following cases:

- The refugee claims of asylum seekers who arrive unauthorised at air and sea ports and who invoke Australia's obligations in the initial entry interview;
- Unauthorised boat arrivals;
- Asylum seekers who lawfully arrive and then make a refugee claim.

Labor will also fund appropriate non-government agencies to provide case workers to work with asylum seekers to explain the process being undertaken and to manage expectations. Overseas evidence suggests that case worker support facilitates managing processing and detention issues easier, and also facilitates achieving effective return arrangements in the case of a negative decision. Asylum seekers will be entitled to professional advice and proper interpreting services when preparing claims.

The RSDT will be composed of one legally qualified person and two community members. This would give ordinary Australians a say in Australia's refugee program. The legally qualified RSDT member will be given permanent appointments so that there can be no suggestion of political interference and bias. As the workload will vary depending on asylum seeker numbers, there will be the facility for non-full time appointments with RSDT members asked to take cases when required.

With the RSDT in place, refugee claims will be processed in the following way:

- Asylum seekers will apply in writing, with assistance from a lawyer or migration agent, for asylum under the 1951 Refugee Convention. For any detention cases,

DIMIA and ASIO will commence security and character checking immediately to prevent any delays in asylum seekers who are found to be refugees being released from detention.

- At the time of applying the asylum seeker will need to execute a co-operation agreement verifying that the asylum seeker will co-operate with his/her removal if his/her claim is rejected.
- Instead of multiple rounds of interviews, both DIMIA and the asylum seeker will prepare for one major interview, which will be the opportunity to have all relevant facts and information recorded. Any linguistic or other checking required to establish identity will be undertaken in the lead up to the interview.
- The RSDT Registrar will triage applications on the basis of information contained in the written application and what is known of the country of origin with a view to disposing of manifestly unfounded claims such as claims made by people from countries like Sweden and Canada within a week and listing other claims without obvious merit quickly.
- Following the major DIMIA interview the RSDT will hear the asylum seeker's claim. DIMIA and the asylum seeker will appear at this hearing and address the issue of refugee status.
- Asylum seekers will have funded representation, as they presently do with the hearing open to the public unless closed due to the nature of a specific application.
- If an applicant is obviously a refugee DIMIA can submit a paper to that effect to the RSDT prior to the hearing and avoid the hearing.
- If a non-detained asylum seeker fails to attend the hearing, then his or her claim will be struck out. Such claims will only be reinstated if the claimant can prove he or she failed to attend through no fault of their own.
- There will only be one appeal from the RSDT decision and that would be to the Federal Magistrates Service in relation to errors of law by leave. Leave to hear the appeal will only be granted if, in the opinion of the Court, the asylum seeker has done everything reasonably in his/her power to prepare for removal if the appeal is unsuccessful.
- To create the Federal Magistrates Service as a one stop shop, Labor will:
 - confine to the Federal Magistrates Service all applications for judicial review of decisions made by the RSDT about refugee claims with a specified time limit in which matters would need to be considered;
 - prohibit any appeal from the decision of the Federal Magistrates Service to the Federal Court; and
 - encourage the High Court, at its discretion, to remit to the Federal Magistrates Service all cases where an applicant seeks a review, in the original jurisdiction of the High Court, of a decision of the RSDT. Section 44 of the Judiciary Act 1903 allows the High Court to remit a matter or part of a matter to any Federal, State or Territory court that has jurisdiction in relation to the subject matter. This encouragement might take the form of a legislative amendment setting out the factors to be considered by the High Court in exercising this discretion.

New rules will be designed to discourage lawyers and migration agents acting on a fee or reward basis from encouraging applicants to make appeals which have no reasonable prospect of success. These rules will allow a court to impose a costs order of up to \$5000 on an adviser who encourages a person to make an appeal that has no reasonable prospects of success. Corporate bodies will be liable for a fine of \$10,000. A court could also order costs of bringing the action personally against the adviser. This measure is designed to discourage advisers from exploiting applicants by urging them to take up appeals which, while without foundation, result in considerable further delay, expense and create unreasonable expectations of remaining in Australia.

This system will lead to faster processing with 90% of cases to be determined in 90 days. This system is faster in the following ways:

- By recognising the reality that almost all asylum seekers who receive a negative decision from DIMIA appeal to the next stage and replacing this two stage system with a streamlined one stage system;
- By putting the primary decision in the hands of the RSDT, this model ensures there is a body that can keep the pressure on DIMIA to process cases quickly and in a way that ensures quality decision making;
- By putting the onus on DIMIA to conduct one quality interview instead of several incomplete interviews;
- By putting the onus on DIMIA to form a view on a case after one carefully prepared for interview. If DIMIA needs extra time then it can seek extra time from the RSDT but this extra accountability will encourage more efficient handling;
- By creating a one-stop shop for judicial review and ending multiple appeal possibilities;
- By quickly disposing of unmeritorious claims and punishing those who have encouraged such claims;
- By ensuring security and character checks are done efficiently so that persons recognised as genuine refugees do not continue to be detained while these checks are undertaken;
- By pressuring asylum seekers to co-operate through co-operation agreements and confining appeals to those who co-operate;
- By keeping asylum seekers informed through the case work system; and
- By stopping legal and other advisors facilitating frivolous appeals.

(c) Transparency and speed in ministerial discretion

As noted above under the current system, an asylum seeker whose claim has been rejected may apply to the Minister for Immigration to be allowed to stay on the basis their case raises unique or exceptional circumstances.

Currently, there is no transparency about how Ministerial discretion is used and there have been allegations in the past of political bias in its exercise. Minister Ruddock has used his power under section 417 of the Act to intervene in individual cases many more times than have previous Labor Ministers.

There was public concern when the Minister used section 417 to allow into Australia 200 Lebanese people when there was strong evidence that a substantial number of these individuals were either associated with or members of the Israeli-backed South Lebanese Army, a militia which had tortured and murdered Palestinians and non-Christian Lebanese

since 1980. An SLA-run prison was well-known as a place where people were detained without charge or trial while subjected to disgusting forms of torture.

Minister Ruddock admitted in April 2001 that his decision risked bringing war criminals into the country⁷⁴. Even though the Minister is required to table in Parliament a document in relation to each exercise of discretion, the document gives no details which would enable a proper analysis. Specifically, it does not detail the name or nationality of the asylum seeker and a standard form of words is used in each one in relation the reasons for decision.

Labor believes that a non-transparent process will always be a source of public concern because of the potential for it to be misused for political or even private advantage.

Labor will make the process transparent and ensure independent expert advice is obtained. Labor will refer each claim to the Asylum Seeker Claims Processing Review Committee for advice and will publish the recommendations of the Committee that an asylum seeker's case raises unique or exceptional circumstances.

4. Monitoring returnees

(a) The lack of a monitoring system

Asylum seekers whose claims have failed are routinely removed from Australia and sent to their countries of origin or third countries. Currently, there is no systematic monitoring of what happens to them on return.

Australia is obliged not to return a person who will be persecuted as defined by the Refugee Convention, face a significant threat to their security, human rights or human dignity, be in danger of being subject to torture or face a real risk of violation of their human rights.

Substantial numbers of failed asylum seekers are removed from Australia each year. The Refugee Council of Australia acknowledges that for most failed asylum seekers, returning to their country of origin presents no difficulty, "other than the possible indignity of having failed in their efforts to remain permanently in Australia."

However, there has been concern that on some occasions Australia may have returned people who were then persecuted, killed, tortured, unjustly imprisoned and the like. No doubt, ordinary Australians would be appalled if this country had sent someone to their death or to face torture or other gross abuse.

Given the lack of monitoring it is impossible to know if expressed concerns are true or not. It is also impossible to know if the Australian processing system is ensuring that those with genuine claims stay, while those without are returned.

(b) Senate Committee inquiry and monitoring

In June 2000, the Senate's Legal and Constitutional References Committee published *A Sanctuary Under Review*⁷⁵, an examination of Australia's refugee and humanitarian determination processes. A number of submissions to the inquiry dealt with the issue of monitoring.

The report recommended that the Government place the issue of monitoring on the agenda for discussion at the Inter-Government/Non-Government Organisations Forum with a view to examining the implementation of a system of informal monitoring.

The Government responded:

"The risk to a protection visa applicant inherent in his or her return to the country of origin is assessed as part of the protection determination process. DIMA (as it was then) is in continuous contact, directly or through DFAT or other agencies, with the UNHCR and NGOs in order to gain up-to-date information on the human rights situation and the treatment of

returnees in relevant countries. This information is included in CIS country information holdings and is readily available to primary and RRT decision makers. A system which monitors individual returnees is considered to be impractical and possibly counter-productive.

Where it is assessed as part of the protection determination process that there is no real chance of persecution of the applicant on return, Australia is not responsible for the future well-being of that person in their homeland merely because at some stage they spent time in Australia.”

This response avoided the real question of whether or not there are any circumstances in which the processing system gets it wrong.

(c) *Labor’s plan for monitoring*

Labor believes that monitoring provides the ultimate guarantee that a government has faith in its processing and determination system. Labor believes its processing and determination system will work and is prepared to embark on monitoring of returns.

Specifically, monitoring will:

- Be the ultimate test of the integrity and accuracy of a refugee determination system.
- Assist DIMIA and the RSDT to test the reliability of country information available to them; and
- Address community perceptions and concerns about refugees and the determination process.

Systematic monitoring can only be achieved with the co-operation of relevant international agencies, most particularly UNHCR and relevant non-government agencies.

The Howard Government’s approach has been to denigrate UNHCR and to radically cut its funding. While criticising international agencies enjoys short term domestic popularity, it is ultimately counter-productive to publicly undermine the credentials of the global agency, which is so vital to resolving the many issues relating to global people displacement and refugee and asylum seeker issues.

A Labor Government will indicate its preparedness to have Australia lead internationally by implementing monitoring. In the first instance, monitoring could be extended to target regions where there is some capacity to monitor and a perceived need to improve the country information used to inform refugee determination decision and assessment by the Minister under section 417.

No Australian would support this nation returning a person to circumstances in which they could be killed, tortured, unjustly imprisoned or otherwise persecuted. Being prepared to pursue and implement monitoring arrangements would therefore be in keeping with traditional Australian values and would show Australia, under Labor, in the lead of the global debate.

5. Gender Persecution

Existing international agreements do not provide a clear and systematic framework for dealing with claims based upon gender persecution. Claimants asserting genuine and harsh gender persecution may often be disadvantaged as a result.

Labor believes that women suffering such persecution who are at risk of harm should be afforded similar rights to persons suffering persecution on other recognised grounds. Labor will retain the existing off shore visa class providing for women at risk, and will monitor the functioning of this visa class to ensure it is achieving these aims.

Labor will also work towards developing a practical and consistent international framework for dealing with such claims.

6. Conclusion

Labor will seek global agreement to UNHCR undertaking processing world wide. In the interim, Labor will seek to pilot UNHCR processing at Christmas Island.

In relation to processing of claims generally, Labor will ensure processing of refugee claims is fast, fair and transparent. Fast, fair and transparent processing is more humane, less expensive and in Australia's national interest. Labor is prepared to put its processing system to the ultimate test by instituting a mechanism for monitoring returnees.

Chapter Six –

Mandatory Detention

1. Introduction

Mandatory detention is a vital part of managing unauthorised arrivals. It is vital while health, identity and ASIO security checking is undertaken. It is also vital that mandatory detention is used to ensure those whose claims fail are available for removal to their countries of origin or to the countries from which they came. Mandatory detention is also important to facilitate fast processing as such processing is most expeditiously undertaken while people are in a common location.

Labor supports mandatory detention and was the political party responsible in government for its introduction through the *Migration Reform Act 1992* which came into effect 1 September 1994.

However, Australians are rightly concerned that the current mandatory detention system is not working. This concern is not confined to one section of the community or to one side of politics. Leading Liberals such as Malcolm Fraser have expressed concern, as have all-party Parliamentary Committees, most notably the Joint Standing Committee on Foreign Affairs Defence and Trade - Human Rights Sub-Committee in its June 2001 report - a report to which the Howard Government has yet to respond. Experts including doctors, lawyers, educators as well as international bodies have all expressed concern. The Human Rights and Equal Opportunity Commission is also concerned and is currently undertaking a major inquiry into children in detention.

In short summary the concerns expressed include:

- That, as detailed in Chapter Five, processing takes too long, leading to very long term detention. Such long term detention coupled with a lack of feedback about what is happening with processing, causes a loss of morale, depression, self-harm and suicide attempts⁷⁶.
- Children being in detention, including young unaccompanied children. Such children are denied appropriate education opportunities and live in an environment where they are exposed to adults who are depressed, violent, engaging in acts of self harm and suicide attempts. Children in detention have copied this behaviour. In addition, children have been at risk of sexual abuse⁷⁷.
- The lack of streaming in detention centres so that every person is subject to the conditions and security arrangements required for the most problematic detainee.
- Detention centres being shrouded in secrecy with the Howard Government hiding the truth behind the private contractor running detention centres and commercial in confidence provisions. Allegations of mistreatment are not properly and openly investigated.
- Security problems including rioting and mass breakouts. From 1 July 2001 to 30 June 2002, 145 people escaped detention. Some of those people are still at large^{78,79}.

Labor understands these concerns and, as detailed in this Chapter, Labor will manage a mandatory detention system that overcomes these problems.

Labor believes that the current system of mandatory detention is fundamentally flawed because it treats all asylum seekers in the same way. Labor believes it is simply not appropriate to have children, and particularly unaccompanied children, kept for months or even years, in facilities where the level of security has been designed to deal with the most

difficult adult asylum seeker. Labor's model rectifies this fundamental flaw, which coupled with fast, fair and transparent processing, will mean detention time and the problems of detention are minimised.

2. Labor commitments to date

The following commitments have already been made by Labor and will be honoured in full by a Labor Government:

- children will be removed from behind the razor wire;
- Woomera will be closed;
- management of detention centres will be returned to the public sector;
- health services in detention centres will be provided by independent medical professionals who will be free to speak out on issues; and
- media access to detention centres will be permitted subject to agreed protocols.

Labor has moved an amendment to the *Migration Legislation Amendment (No. 1) Bill* to modify the legal power to detain asylum seekers so that children cannot be held in high security detention for long periods of time. This amendment will compel the Government to:

- put unaccompanied children into foster or community care arrangements; and
- allow families with children to live in accommodation like the Woomera Alternate Detention Trial⁸⁰.

This section details the remainder of Labor's plans to improve mandatory detention. It should be noted that under Australian migration law visa overstayers, persons who breach visa conditions and persons who have committed criminal offences and are awaiting deportation are detained. Current detention arrangements would be maintained for such persons. Labor's plan relates solely to the detention of asylum seekers.

3. Location and management of detention centres

(a) Location

There are 7 detention centres on mainland Australia:

- Villawood in Sydney;
- Maribyrnong in Melbourne;
- Woomera and Baxter in SA; and
- Curtin, Perth and Port Hedland in WA.

Villawood, Maribyrnong and Perth are predominantly detention facilities used for people who are not asylum seekers and will be retained by Labor for such purposes.

Asylum seekers have also been detained at four locations off the Australian mainland:

- Christmas Island;
- Cocos (Keeling) Island;
- Manus Island PNG; and
- Nauru.

Labor will use the facility being constructed at Christmas Island as detailed in Chapter Five as the prime initial detention facility for those asylum seekers arriving by boat. Labor will

only detain persons at Cocos (Keeling) Island in transit if that is required because of where at sea asylum seekers were intercepted by the Coastguard. Labor will not continue the 'Pacific Solution' and will not have detention facilities in PNG and Nauru.

(b) Management of detention centres

In September 1997 the Howard Government contracted out the running of detention centres to Australasian Correctional Services Pty Ltd (ACS), with ACM as the wholly owned subsidiary of ACS delivering the service. The privatisation of detention facilities has led to a loss of public accountability. The Howard Government has never disclosed the full details of payments to ACM and in particular how ACM is fined for incidents such as escapes and self harm and for what conduct ACM is rewarded.

The Howard Government is in the process of re-tendering the contract for management of detention facilities with the successful tenderer to be announced later in the year. Only four companies were shortlisted. ACM and Group 4 Falck Global Solutions Pty Ltd are both shortlisted, but a wholly owned subsidiary of the latter merged with the Wackenhut Corporation (the parent company of Wackenhut Corrections Corporation and owner of ACS and ACM) in May 2002⁸¹. The third bidder is Management & Training Co Pty Ltd which runs one correctional facility in Australia. The remaining shortlisted bidder was Australian Protective Service, the public sector body formerly responsible for management of detention facilities. APS has now withdrawn from the tender partly because of resource constraints and partly because of fears of conflicts of interests given its recent amalgamation with the AFP.

Labor has consistently called on the Government to halt the tender round and return detention centre management to the public sector. If the Howard Government continues with the tender, an incoming Labor Government will honour that contract but will return detention centre management to the public sector as soon as legally possible. Efforts will be made to ensure job security for employees involved in providing detention services during this transition.

In returning detention centre management to the public sector, Labor will ensure that the public sector body is adequately resourced and does not face conflict of interest problems.

4. A new system of mandatory detention

(a) Detention models

Labor will operate two styles of detention facilities.

The first will be high security detention operated at Christmas Island and Baxter with some highly secured detention capacity at Port Hedland. Under Labor, high security detention facilities will include some high security detention capacity in the form of the Alternate Detention Trial at Woomera in which detainees with children have been allowed to live in ordinary style housing with supervision and perimeter security.

The second model will be supervised hostels.

(b) Unaccompanied children

Under Labor any unaccompanied children under 14 will be placed in the care of foster families after health checking is completed. Unaccompanied youths between 14 and 18 will be released into appropriate community care arrangements following health and security checking.

A focus of community concern about the current system of detention has centred on the plight of unaccompanied children. Labor's new mandatory detention model addresses these issues.

Under Labor's new mandatory detention model such children will not be detained. But to avoid any perception of a conflict of interest, Labor will make its proposed National Children's Commissioner the legal guardian of unaccompanied children who arrive unauthorised.

(c) High security detention

Under Labor, high security detention will be used on initial arrival for unauthorised arrivals other than unaccompanied children. Security, identity and character checking will be commenced for all asylum seekers immediately on arrival.

All unauthorised arrivals, other than unaccompanied children, will remain in high security detention for the purposes of health, identity and security checking and for the purposes of enabling the one major interview to be conducted in relation to the asylum seeker's claim.

On the basis of that one major interview, an assessment will be made of whether the asylum seeker has a claim of merit. For those asylum seekers who have a claim of merit, security, identity and character checking will be completed as a matter of urgency.

Asylum seekers who have been assessed as having a claim of merit and who satisfactorily clear the security, identity and character checks will then be moved to a supervised hostel. In order to qualify to move to a supervised hostel, an asylum seeker will be required to sign a co-operation agreement pledging to obey all rules applying at the supervised hostel. Failure to obey such rules will result in the asylum seeker being returned to high security detention.

Clearly, some asylum seekers will not qualify to move to supervised hostels and will be required to remain in high security detention. To the extent that such asylum seekers are family groups with children then a number of high security detention facilities suitable for family groups will be constructed. Such high security detention facilities will be based on the Alternate Detention Trial at Woomera and will consist of a number of ordinary style homes which are secured at the perimeter and which have a 24 hour a day security presence. Children resident in such high security detention facilities will be permitted to attend ordinary schools and will be taken to and from school by security officers each day.

(d) Supervised hostels

Supervised hostels will be located in regional Australia in communities that volunteer to host one. Specifically, Labor will ask local councils to consider their community being host to a supervised hostel. If a local council, after community consultation, indicates an interest, Labor will enter an agreement with that local council, which deals with all relevant issues.

Labor will ensure that the jobs and economic activity created by the supervised hostel will benefit the local community and appropriate services to support the hostel are provided to the community.

In assessing appropriate regional locations for supervised hostels, Labor will endeavour to identify areas with labour shortages, particularly shortages of agricultural labour and the like.

Asylum seekers will be permitted to leave the supervised hostel during the day but will be required not to leave before a specified time in the morning and to return at a specified time in the evening. There will be supervisors at the hostel at all times. Any asylum seeker who fails to return to the supervised hostel on time or who otherwise disrupts the hostel or breaches its rules will be immediately returned to high security detention.

Asylum seekers will be permitted to work and if working will be responsible for meeting their day to day living costs. Asylum seekers unable to secure work will receive the equivalent of special benefit and will be responsible for meeting their day to day living costs.

Children resident at supervised hostels will attend local schools. Labor will enter an agreement with the States regarding the Commonwealth meeting the costs incurred by the States for providing state based services to asylum seekers like schooling, health services and the like.

(e) Monitoring conditions of detention

Currently, even the prison system is open to better oversight and review than detention centres.

The current Immigration Detention Advisory Group has played a useful role in monitoring detention conditions and in brokering resolutions to key disputes such as the Woomera hunger strike in January this year.

Labor has been very supportive of the Immigration Detention Advisory Group but believes there is a need to move to a more clearly independent and formalised review system.

Labor will create an independent Inspector-General of detention centres. The Inspector-General will be a statutory officer holder. Dependent on detention case loads the position may be full or part time.

The Inspector-General will be able to receive and resolve individual complaints from detainees. The Inspector-General will be empowered to enter detention centres and supervised hostels, including on Christmas Island, meet with detainees as necessary, question detention centre staff and view relevant records. For example, there have been allegations about physical mistreatment of detainees and allegations about lack of assistance to disabled detainees. The Inspector-General could receive complaints, inquire and resolve such matters.

In addition, the Inspector-General will monitor the particular circumstances of children in detention. Under Labor's plan, unaccompanied children will not be in detention but children with families may be in facilities modeled on the Alternate Detention Trial at Woomera or in supervised hostels. The Inspector-General of detention will pay particular attention to ensuring the needs of those children are being met.

The Inspector-General will also be able to inquire into more systematic problems on his or her own motion. For example there is an issue at the moment about the configuration of the facilities at Baxter. The Inspector-General could inquire and ascertain if there is any validity to such claims and make recommendations to the Minister.

The Minister could direct the Inspector-General to inquire into any detention issue and receive recommendations about it. The role of the Inspector-General would therefore mirror the role of comparable statutory officer holders in the prisons system. The current Immigration Detention Advisory Group could then work as an advisory and support group for the Inspector-General.

(f) Review of detention

A major criticism of the Howard Government's punitive detention system is that people languish in detention for periods of years and there is no independent review of why.

Labor will remedy this major defect with the current detention system.

The Asylum Seeker Claims Processing Review Committee, described in Chapter Five, will review any case, whether it is on Christmas Island or the mainland, where a person is still in high security detention after 90 days.

In undertaking such a review the Committee will have full power to enter detention centres and supervised hostels, including on Christmas Island, meet with asylum seekers as

necessary, question DIMIA and ASIO staff and view relevant records. The Committee will complete the review within 30 days.

The Committee may determine that continued detention is warranted for reasons like security concerns, where the delay is due to a failure to co-operate by the asylum seeker or the return of the asylum seeker overseas is being arranged. If the Committee concludes further detention is required then it need not take any immediate action but it must review the detention again each 30 days to see if it is still warranted.

The Committee may determine that continued detention is due to some undue delay or incompetence in how the asylum seeker is being treated. If so, the Committee will issue a recommendation to the Minister as to what steps need to be taken to deal with the refugee claim properly.

The Committee may determine that continued detention is unwarranted and may then make a recommendation to the Minister in relation to the future handling of the asylum seeker and his or her case.

If the Minister for Immigration does not accept a recommendation of the Committee, the Minister will be required to explain his or her failure to do so to Parliament.

5. Better security checks

(a) Protecting Australia - The vital importance of security checking

Nothing is more important than protecting Australia. Everyone who arrives unauthorised will be security checked. Asylum seekers will not be moved to supervised hostels without clearing an ASIO security check.

In the two years to July 2002, ASIO checked 5939 asylum seekers who arrived in boats and found no-one who constituted a danger to Australia's security⁸².

Minister Ruddock has confirmed that a terrorist is not likely to enter Australia by boat: "People who are terrorists are very unlikely to try and come that way knowing they are going to be detained if they happen to arrive in Australia."⁸³

The dishonest fear campaign run by then Defence Minister Reith and others in the Howard Government during the last election campaign about boat people being terrorists alongside the 'children overboard' conspiracy created a new low in Australian politics.

It is not necessary to lie to protect Australia, but it is necessary to be constantly vigilant.

(b) Labor's plan for better security testing

As indicated in Chapter Five, under the Howard Government, security checking is only begun on asylum seekers when identity is established.

Labor will implement a better system. Security and character checking will be done at the same time as claims processing. Even for those whose claims ultimately fail, it is important to our national security that we know what sort of risk, if any, they represent. For those with genuine claims, it will mean they are not detained longer than necessary.

Labor will ensure ASIO has sufficient resources to do quality security checks in a timely fashion and that DIMIA character checking is streamlined as part of the new, more efficient processing system.

6. Better health checks

(a) Health care in detention

There is not enough being done to address public health issues in detention centres.

Onshore medical examinations for detainees are performed by Health Services Australia. The organisation is authorised to conduct medical examinations and chest X-rays to detect the presence of tuberculosis.

Apart from testing and dealing with any identified disease, asylum seekers require immunisation. Currently DIMIA does not immunise in accordance with the national vaccination guidelines issued by the Communicable Diseases Network of Australia. The only reason given for not doing so is cost.

(b) Labor's plans for immunisation

Labor believes protecting Australia from contagious diseases is too important for penny pinching. Asylum seekers who are genuine refugees will be released into the Australian community. Detained asylum seekers come into contact with other detainees, detention staff, medical staff, DIMIA officers, legal representatives and general visitors.

Therefore to protect Australia it is vital that appropriate immunisation is undertaken. It is also vital to protect the health of children in detention by ensuring these children receive the appropriate vaccinations.

Labor will strictly adhere to the national vaccination guidelines of the Communicable Diseases Network of Australia.

7. Conclusion

This policy paper details Labor's long term comprehensive solution to protect Australia and the Australian way of a fair go for all. Mandatory detention is part of the long term comprehensive solution. Labor supports mandatory detention but recognises that there is not one form of detention. Labor's mandatory detention model meets the need for security while providing better conditions, particularly for family groups.

Chapter Seven -

Temporary Protection Visas

1. Introduction

Prior to 1999, an asylum seeker who entered Australian unauthorised and who was found to be a refugee under the Convention was entitled to a Permanent Protection Visa. This visa enabled that person to stay in Australia permanently, to seek citizenship, to travel to and from Australia and, most importantly of all, to seek family reunion.

In 1999, the *Migration Act* was changed so that such a person would only receive a Temporary Protection Visa (TPV). This visa only entitles the holder to stay in Australia for 30 months. At the expiration of the 30 month period, the visa holder is supposed to be reassessed to see if his or her refugee claim still remains. If the person is still assessed as a refugee then he or she will be entitled to a Permanent Protection Visa. Holders of TPVs do not have the right to travel, to attend English classes or undertake other studies or to access the Job Network. Most importantly, a TPV holder cannot seek family reunion.

In 2001, the relevant legislation was changed again so that a person who had remained in a country in which he or she could have sought protection for more than seven days whilst travelling to Australia, would only ever be entitled to a TPV. The first TPV would be for a 30 month period and on reassessment, if the person was still assessed as a refugee then he or she would get another TPV.

It should be noted that lawfully arrived asylum seekers whose claims are accepted are entitled to Permanent Protection Visas.

This Chapter canvasses some issues associated with TPVs and details Labor's view of the TPV arrangements.

2. Temporary Protection Visas - Are they working?

(a) Policy goals

The TPV was introduced to deter people from moving from countries of first asylum. People who are processed in countries of first asylum and who are resettled in Australia receive visas which allow them to live in Australia permanently with full rights, including family reunion.

The creation of the TPV was designed to send a message that if a person moved beyond a country of first asylum and sought to enter Australia unauthorised then they would only be entitled to a much less generous visa class.

The tightening up of the TPV regime in 2001 was designed to send a strong message that people who moved through a number of transit countries without seeking their care and protection would be in the worst possible position on entering Australia. Such persons would only ever get to stay here on a temporary basis and would never be able to unite with their families.

Post the 2001 changes it was envisaged that almost everyone entering Australia by boat would be only ever able to get a TPV. In almost all cases, such persons would have spent more than seven days in countries like Malaysia or Indonesia where they could have contacted UNHCR and sought care and protection.

Seeking to discourage movement beyond countries of first asylum and through transit countries is a good policy aim. To make such movements people put themselves in the hands of people smugglers and engage in dangerous journeys. As noted by UNHCR, the

issue of secondary movement is undermining the international protection system and does need to be addressed.

(b) *The current situation*

Despite the policy goal behind the adoption of TPVs, it appears that TPVs are in fact encouraging people smuggling and unauthorised arrivals.

Specifically, it appears that the families of persons who will only ever be entitled to TPVs have used people smugglers because it is the only way in which they will ever reunite with their family member in Australia. For example, it appears that many of the asylum seekers on Manus Island PNG and Nauru are women and children seeking reunion with husbands in Australia on TPVs.

The first 30 month TPVs have started to expire and the claims of the asylum seekers are being re-assessed. The 3754 TPV holders who applied prior to 27 September 2001 will be assessed for Permanent Protection Visas under the 1999 legislation. Those who applied after that date will be assessed for further TPVs under the 2001 legislation. It is not clear how these reassessments will be undertaken and what will be the costs.

There are also a number of legal uncertainties, with some arguing that the 2001 legislation is fatally flawed and, despite its intention, TPV holders will still be entitled to apply for Permanent Protection Visas. Clearly, these matters need to be resolved and may require a further response from Labor.

There is also clear evidence that the lack of access to English language classes and the Job Network is leading to welfare dependency and despondency.

3. Labor's plan for Temporary Protection Visas

Labor accepts that it is important to assess whether persons have protection needs that are lasting or their needs are short-term. Labor will:

- Keep a short term TPV for asylum seekers who have used people smugglers and arrived unauthorised;
- At the expiration of the short term TPV, assess whether circumstances have significantly changed in the country of origin;
- Grant permanent protection visas if the circumstances have not changed as the TPV holder is still a genuine refugee;
- Fully reassess claims if circumstances have changed; and
- Give priority to family reunion applications from those who have settled in the regions of Australia designated as in need of population and with labour shortages.

To facilitate a rapid and successful transition into the Australian community, Labor will allow TPV holders to access settlement services including English language training and the Job Network.

Chapter Eight -

Staying in Front

1. Introduction

Under Labor, Australia will be seeking to lead the world on refugee and asylum seeker issues. In this policy, Labor has advocated the adoption of a one worldwide processing system and will advocate that idea internationally in multilateral forums and in government to government dialogue. Leading the world requires access to the best possible brains and advice.

In addition, Australian domestic policy needs to be informed by the best ideas and information available.

2. Labor's Plan for Staying in Front

To ensure Australia stays in front, Labor will create an expert advisory council on asylum seeker and refugee issues.

Co-chaired by the Ministers for Population & Immigration and Foreign Affairs, the Council will include experts in refugee issues and security issues, peak agencies and eminent Australians. The Council will advise on policy responses to emerging issues, aid priorities, refugee intake, settlement, claims processing and detention.

The Council will receive annual reports from the Inspector-General of Detention and from the Asylum Seeker Processing Review Committee to inform its deliberations.

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