

Conference of Leaders of Religious Institutes (NSW)

Response to

Protecting Australia, Protecting the Australian Way:

Labor's Policy on Asylum Seekers and Refugees

Following the Labor Party's release of its asylum seeker and refugee policy, CLRI(NSW) would like to contribute the following comments in an attempt to further the debate on this very important issue.

Whom are we protecting?

- Labor's policy appears misdirected in that Labor focuses on the need to protect Australia from the arrival of asylum seekers, rather than on the need to protect asylum seekers from the causes of their flight. CLRI(NSW) does not question the need to maintain a secure Australia, however, in line with Australia's international obligations under the Refugee Convention, the focus of any refugee policy must be the protection of those who seek our help.
- Australia does not share with Europe the problem of unmanageable waves of asylum seekers. In our region, where refugee flows are manageable, Australia must consider the complete fulfilment of our international and moral obligations a priority. When events push larger numbers of asylum seekers into our region, refugees can be protected within established mass-movement parameters.
- The Green Card concept and plans for better port security, while they may succeed in their objectives, have little or nothing to do with refugees and asylum seekers. The 60,000 'overstayers' noted in the Labor policy are not refugees, but for the most part are former backpackers and others who arrived with visas and who never left.

What is better in this policy?

- **Ending the practice of sending people from Australian territory to that of our neighbours.** The 'Pacific Solution' is a needlessly expensive way of avoiding our international obligations. The 'Pacific Solution' is not over, however, until Australia takes full responsibility for all of the territory we claim. Labor's continued excision of parts of Australia's territory is unacceptable.
- **The creation of an independent Inspector General of Detention.** This is a welcome development. Such a position would benefit from determinative powers, so that people inappropriately detained could be released upon the order of the office holder. It appears that Labor's suggested detention review committee could fill this role if it worked closely with the Inspector General and the Minister.
- **Ending the detention of Children.** The policy does appear to take children out of the current detention centres. It does not, however, remove them from behind barbed wire or from a 24 hour security presence.
- **The creation of hostels for people who are not yet admitted as refugees.** Hostels ought to be in regions and centres that can offer the sort of support and assistance necessary for early settlement into the Australian community. By requiring that hostels are placed according to community wishes and employment opportunities, Labor's policy focuses on Australia's needs without clearly identifying the needs of asylum seekers.

- **Ending the regime of lifelong “temporary” visas.** Labor’s recognition of the difficulties faced by people on temporary visas leaves it with no reason for keeping any part of the policy. By perpetuating TPVs for unauthorised arrivals, Labor is continuing the practice of penalising people for their mode of entry to Australia – in breach of our Convention obligations.
- **More money for the UNHCR and for countries of first asylum.** More aid money is welcome – as long as increases overseas do not provide an excuse for less at home.
- **Monitoring returned asylum seekers.** The proposal to monitor those who are returned after a negative refugee status determination is welcome and should be supported. CLRI(NSW) hopes that Labor will adequately support not only UNHCR and the Red Cross but also other international agencies in this effort.
- **Increasing places for off-shore asylum seekers.** While Australia should certainly increase the number of people we resettle, Labor’s policy does not promise to de-link the on-shore program from the off-shore. In addition, family reunion for people recognised as refugees in Australia should not detract from the number of resettlement places that Australia offers internationally.

What doesn’t work so well?

- **A coast guard and a green card, people smuggling programs and upgraded port security:** These are fine ideas – but they have nothing to do with a policy designed to protect refugees.
- **A world wide system for processing refugee claims:** We already have one. The Refugee Convention provides for Contracting States to prevent the return of refugees who enter their countries and to assist them in settling while they are being protected. The Convention provides for States to move towards naturalisation for refugees. This is called asylum. In putting forward its alternative plan, the Labor Party seems to be suggesting that developed countries should not do their bit for asylum, but instead, that developed countries should have the right to take only as many people as they choose, as though ‘resettlement’ can fulfil our asylum responsibilities. Furthermore, the Labor Party appears to advocate an international system whereby the UNHCR would conduct refugee status determination world wide and, in so doing, giving to the UNHCR the power to interpret the convention and to determine the relative safety of countries of asylum and transit, as well as countries of origin? CLRI(NSW) questions the likelihood of other countries accepting the UNHCR’s assessment of refugee claims made on their territory.
- **Discouraging “Secondary Movement”:** Labor’s Policy says that the reason for closing the border is to discourage “secondary movement”. It is crucial that in any discussion of ‘secondary movement’, it is recognised that movement only becomes ‘secondary’ once the person in flight has already found effective protection.
- **The same system on Christmas Island as in camps overseas:** There is a basic problem here. Every camp, every place refugees are found, presents different problems and so requires different procedures and considerations.
- **A new Refugee Status Determination Tribunal.** The revised system is not made clear in the policy paper and CLRI(NSW) will not comment in detail on the whole legal structure. However, given that the policy leaves no room for review on the merits of the decision, the appointment of two thirds of the Tribunal’s members on the basis of their connection with the Australian community ignores the connection that qualified people can have to the community and the seriousness of the position they are to hold.

- **Humanitarian Visas.** While commending Labor on its focus on humanitarian visas for non-convention refugees, CLRI(NSW) is concerned that mere transparency of a Minister's discretionary decision could affect the refugee by making their presence in Australia more public than perhaps is necessary. A visa class for humanitarian claimants, with clear criteria and an administrative process that runs parallel to the refugee status application process, would be more appropriate. In addition, the inclusion of considerations of statelessness and torture in any new visa categories or criteria would bring Australia into line with our international obligations while providing protection to those in need.
- **No mention of those currently detained indefinitely.** There are currently hundreds of people in Australia's detention system who cannot be returned to their own countries, but who will not be released into the Australian community. Labor appears not to have considered the needs of these people. It is imperative that any system that purports to deal more humanely with those who seek asylum on-shore in Australia has mechanisms for dealing with those people who cannot be returned, but who do not formally qualify to remain in Australia.

Conclusion

CLRI(NSW) questions the focus of Labor's policy. If it is meant to be a policy concerning Australia's territorial security then it is comprehensible, if perhaps incomplete. If the policy is really designed as a revised refugee and asylum seekers policy, it is lacking crucial details, and it suffers critically from a confused focus. While security must be a priority of any Australian Government, security needs must be balanced against the needs and rights of the human beings who fall within the Government's jurisdiction. A policy on refugees and asylum seekers must take as its focus the needs of those that Australia has made an international commitment to protect.

Summary of a paper written by Jackie Keegan
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