

# Australia's Maltreatment Of Asylum Seekers And Refugees – Part II

By George Venturini

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“The present policy was brought in by Labor, ... but what the Howard government added was a public scare campaign about invasion by boat people ... As the initiator of detention camps, Labor acted badly but stealthily. Howard ea policy became a nightmare, with people seeking refugee status immediately labelled as queue jumpers, their children incarcerated, the barbed wire strengthened, and talk of arming the guards with sedative-filled syringes.”

Donald Horne, *Looking for leadership* (Melbourne 2001). Horne, 1921-2005, was one of Australia's best-known public intellectuals.

The Gillard Government acted swiftly.

On 28 June 2012 Prime Minister Gillard and the Minister for Immigration and Citizenship Bowen announced that the Government had invited Air Chief Marshal Angus Houston A.C., A.F.C. (Ret'd), the former Chief of Australia's Defence Force, to lead an expert panel to provide a report on the best way forward for Australia to prevent asylum seekers risking their lives on dangerous boat journeys to Australia.

The expert panel also included Mr. Paris Aristotle A.M., the Director of the Victorian Foundation for Survivors of Torture Inc. (also known as Foundation House) and Professor Michael L'Estrange A.O., the Director of the National Security College at the Australian National University.

The terms of reference were narrowly specified:

“The Panel will provide advice and recommendations to the Government on policy options available, and in its considered opinion, the efficacy of such options, to prevent asylum seekers risking their lives on dangerous boat journeys to Australia. As part of its review, the panel will take into account, and provide policy advice on:

- how best to prevent asylum seekers risking their lives by travelling to Australia by boat;
- source, transit and destination country aspects of irregular migration;
- relevant international obligations;
- the development of an inter-related set of proposals in support of asylum seeker issues, given Australia's right to maintain its borders;
- short, medium and long term approaches to assist in the development of an effective and sustainable approach to asylum seekers;
- the legislative requirements for implementation; and
- the order of magnitude of costs of such policy options.

The Panel will consult government and NGO s and individuals. It will have access to the information it requires to support its deliberations and finalise its advice.

The Panel will consult with the Multi-Party Reference Group to understand and take into account the views of the Parliament.

The Panel will provide advice to the Prime Minister and Minister for Immigration and Citizenship prior to the start of the next sitting period in August 2012. The Panel's advice will be released publicly.”

The Panel was to report back to Parliament after the southern winter recess.

The choice of membership, coming from a Labor Government, was shockingly indicative - a combination of despair and surrender to the ground of the Opposition. Significantly, the Panel did not include a representative of the U.N. High Commissioner for Refugees, whose office has been a critic of the offshore processing and mandatory detention policies.

The Panel chair, Mr. Houston, was all his life a military man through and through. He had spent 40 years in the Air Force, as Chief of Air Force since 2001 and acting Chief of the Defence Force since 2001. His only connection and merit in matters refugees was to have told the truth at the Senate inquiry in the *children overboard affair* in February 2002: he refuted the Howard Government's claim during the 2001 election campaign that seafaring asylum seekers had thrown children overboard in a presumed ploy to secure rescue and passage to Australia.

The second member is a completely 'establishment' man, and well known for his sympathy with the Liberal Party. Between 1989 and 1994 Dr. L'Estrange worked for several Leaders of the Opposition in a range of policy advisory positions. In 1995 he was appointed the inaugural Executive Director of the Menzies Research Centre, a Liberal Party 'think-tank' in Canberra. In March 1996 Dr. L'Estrange was appointed by Prime Minister Howard as Secretary to Cabinet and Head of the Cabinet Policy Unit. He served in that capacity until July 2000 when he became Australia's High Commissioner to the United Kingdom. Dr. L'Estrange returned from that posting in January 2005 to take up the position of Secretary of the Department of Foreign Affairs and Trade in Canberra, a position he held until August 2009. In December 2009 Dr. L'Estrange was appointed Professor and Director of the National Security College at the Australian National University. The National Security College advertises itself as "a specialist postgraduate school aimed at enhancing the functioning of the national security community, strengthening networks of cooperation between practitioners and non-government experts, contributing to the development of a new generation of strategic analysts, achieving effective outreach to business and the wider community..." - in other words: spooks.

Nicely framed between those two preceding gentlemen was the third member of the panel: Mr. Aristotle, Director of the Victorian Foundation for Survivors of Torture Inc. and Executive Member of the Forum of Australian Services for Survivors of Torture and Trauma. Since 2001 Mr. Aristotle has served on various Government bodies, as member of the Immigration Detention Advisory Group, Chair of the Council for Immigration Services and

Status Resolution and, currently, as Chair of the Ministers Council on Asylum Seekers and Detention. Mr. Aristotle is also a member of the Refugee Resettlement Advisory Council and has over 25 years experience in the field of supporting refugees and asylum seekers.

Mr. Aristotle was the only person with any expertise in the matters referred to the Panel. The other two could be regarded as experts in defence and security. That would say very much about the Prime Minister's approach to the problem: asylum seekers seen as a threat to the security of Australia !

It would also explain why the 'solution' to drowning was certainly not envisaged in terms of human rights, international law, commitment to international treaties and conventions ratified by Australia and by which Australia should consider itself bound.

The Report of the Expert Panel on Asylum Seekers was released on 13 August 2012.

The Panel made 22 recommendations.

In Recommendation 1 the Panel said that, as a matter of principles, the Panel recommended that the following should shape Australian policymaking on asylum seeker issues (Report, paragraphs 2.6-2.22):

- The implementation of a strategic, comprehensive and integrated approach that establishes short, medium and long-term priorities for managing asylum and mixed migration flows across the region.
- The provision of incentives for asylum seekers to seek protection through a managed regional system.
- The facilitation of a regional cooperation and protection framework that is consistent in the processing of asylum claims, the provision of assistance while those claims are being assessed and the achievement of durable outcomes.
- The application of a 'no advantage' principle to ensure that no benefit is gained through circumventing regular migration arrangements.
- Promotion of a credible, fair and managed Australian Humanitarian Program.
- Adherence by Australia to its international obligations.

Dealing with Australia's Humanitarian Programme, the Panel made the following:

*“Recommendation 2*

The Panel recommends that Australia’s Humanitarian Program be increased and refocused:

- The Humanitarian Program be immediately increased to 20,000 places per annum (Report, paragraphs 3.3-3.8).
- Of the 20,000 places recommended for the Humanitarian Program, a minimum of 12,000 places should be allocated for the refugee component which would double the current allocation (Report, paragraphs 3.3-3.8).
- Subject to prevailing economic circumstances, the impact of the Program increase (recommended above) and progress in achieving more effective regional cooperation arrangements, consideration be given to increasing the number of places in the Humanitarian Program to around 27,000 within five years (Report, paragraphs 3.3-3.8).
- The Humanitarian Program be more focused on asylum seeker flows moving from source countries into South-East Asia (Report, paragraphs 3.3-3.9).
- The Humanitarian Program be more focused on asylum seeker flows moving from source countries into South-East Asia (Report, paragraphs 3.3-3.9).”

As far as a possible regional engagement, the Panel said:

*“Recommendation 3*

The Panel recommends that in support of the further development of a regional cooperation framework on protection and asylum systems, the Australian Government expand its relevant capacity-building initiatives in the region and significantly increase the allocation of resources for this purpose (Report, paragraphs 3.26-3.28).

*Recommendation 4*

The Panel recommends that bilateral cooperation on asylum seeker issues with Indonesia be advanced as a matter of urgency, particularly in relation to:

- The allocation of an increased number of Humanitarian Program resettlement places for Indonesia (Report, paragraphs 3.20-3.22).
- Enhanced cooperation on joint surveillance and response patrols, law enforcement and search and rescue coordination (Report, paragraphs 3.20-3.22).
- Changes to Australian law in relation to Indonesian minors and others crewing unlawful boat voyages from Indonesia to Australia (Report, paragraphs 3.20-3.22).

*Recommendation 5*

The Panel recommends that Australia continue to develop its vitally important cooperation with Malaysia on asylum issues, including the management of a substantial number of refugees to be taken annually from Malaysia (Report, paragraphs 3.23-3.24).

*Recommendation 6*

The Panel recommends a more effective whole-of-government strategy be developed for engaging with source countries for asylum seekers to Australia, with a focus on a significant increase in resettlement places provided by Australia to the Middle East and Asia regions (Report, paragraphs 3.29-3.33).”

With reference to regional processing, the Panel proffered:

*“Recommendation 7*

The Panel recommends that legislation to support the transfer of people to regional processing arrangements be introduced into the Australian Parliament as a matter of urgency (Report, paragraphs 3.54 and 3.57). This legislation should require that any future designation of a country as an appropriate place for processing be achieved through a further legislative instrument that would provide the opportunity for the Australian Parliament to allow or disallow the instrument (Report, paragraph 3.43).

*Recommendation 8*

The Panel recommends that a capacity be established in Nauru as soon as practical to process the claims of IMAs [irregular maritime arrivals] transferred from Australia in ways consistent with Australian and Nauruan responsibilities under international law (Report, paragraphs 3.44-3.55).

*Recommendation 9*

The Panel recommends that a capacity be established in PNG [Papua New Guinea] as soon as possible to process the claims of IMAs transferred from Australia in ways consistent with the responsibilities of Australia and PNG under international law (Report, paragraphs 3.56-3.57).

*Recommendation 10*

The Panel recommends that the 2011 *Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement* (Malaysia Agreement) be built on further, rather than being discarded or neglected, and that this be achieved through high-level bilateral engagement focused on strengthening safeguards and accountability as a positive basis for the Australian Parliament’s reconsideration of new legislation that would be necessary (Report, paragraphs 3.58-3.70).”

Concerning family reunion, the Panel had this to say:

*“Recommendation 11*

The Panel recommends that the current backlog in the SHP [special humanitarian programme] be addressed as a means of reducing the demand for family reunion through irregular and dangerous maritime voyages to Australia, and that this be achieved through removing family reunion concessions for proposers who arrive through irregular maritime voyages – with these proposers to instead seek reunion through the family stream of the Migration Program (Report, paragraphs 3.13-3.18).

*Recommendation 12*

The Panel recommends that in the future those who arrive in Australia through irregular maritime means should not be eligible to sponsor family under the SHP but should seek to do so within the family stream of the Migration Program (Report, paragraph 3.71).”

The Panel added other recommendations:

*“Recommendation 13*

The Panel recommends that Australia promote more actively coordinated strategies among traditional and emerging resettlement countries to create more opportunities for resettlement as a part of new regional cooperation arrangements (Report, paragraphs 3.35-3.37).

*Recommendation 14*

The Panel recommends that the *Migration Act 1958* be amended so that arrival anywhere on Australia by irregular maritime means will not provide individuals with a different lawful status than those who arrive in an excised offshore place (Report, paragraphs 3.72-3.73).

*Recommendation 15*

The Panel recommends that a thorough review of refugee status determination (RSD) would be timely and useful (Report, paragraphs 3.74-3.76).

*Recommendation 16*

The Panel recommends that a more effective whole-of-government strategy be developed to negotiate better outcomes on removals and returns on failed asylum seekers (Report, paragraphs 3.81-3.83).

*Recommendation 17*

The Panel recommends that disruption strategies be continued as part of any comprehensive approach to the challenges posed by people smuggling and that relevant Australian agencies be resourced with appropriate funding on a continuing basis for this purpose (Report, paragraphs 3.84-3.86).

*Recommendation 18*

The Panel recommends that law enforcement agencies in Australia continue their activities in countering involvement of Australian residents who are engaged in funding or facilitating people smuggling operations (Report, paragraph 3.87).

*Recommendation 19*

The Panel notes that the conditions necessary for effective, lawful and safe turnback of irregular vessels carrying asylum seekers to Australia are not currently met, but that this situation could change in the future, in particular if appropriate regional and bilateral arrangements are in place (Report, paragraphs 3.77-3.80).

*Recommendation 20*

The Panel recommends that Australia continue to work with regional countries in a focused way to develop joint operational guidelines for managing Search and Rescue (SAR) activities in the region and to address the need for any further regional and national codification of arrangements across SAR jurisdictions (Report, paragraphs 3.88-3.90).

*Recommendation 21*

The Panel recommends that, in the context of a review of the efficacy of the recommendations put forward in this Report, the linkage between the onshore and offshore components of the Humanitarian Program be reviewed within two years.

*Recommendation 22*

The Panel recommends that the incompleteness of the current evidence base on asylum issues be addressed through a well-managed and adequately funded research program engaging government and non-government expertise (Report, paragraphs 3.38-3.40).”

This last recommendation is puzzling. Is it a sop ? Can it be serious, considering that both Government and Panel have missed every opportunity to recognise an already existing body of knowledge ?

Experts on refugee matters from the academy and from the community sector have worked hard to share their findings in respected journals and various popular and online media. It would be fair to suggest that the settlement services sector has increasingly been influenced by, and availed itself of, research and research practitioners.

Had the Government been serious about its concern for the welfare of the asylum seekers and the tragedy of their drownings, it might have suggested a true specialist who has devote years



to study, counselling and professional assist traumatised, desperate people from the detention centres.

But recent governments have demonstrated an antipathy towards research from the sector where it conflicts with ‘policy’ preconceptions.

If Prime Minister Gillard had wanted an expert it could have invited to the Panel Dr. Louise Newman, who is the Professor of Developmental Psychiatry and Director of the Monash University Centre for Developmental Psychiatry and Psychology. A practising infant psychiatrist with expertise in the area of disorders of early parenting and attachment difficulties in infants, she has undertaken research into the issues confronting parents with histories of early trauma and neglect. Professor Newman has published extensively in the areas of infant mental health, attachment disorders trauma, and prevention of child abuse. She is co-author of the textbook *Clinical skills in infant mental health* and of the forthcoming *Contemporary approaches in child and adolescent mental health*.

But - and there is the but - Professor is the Convenor of the Alliance of Health Professions for Asylum Seekers and an advocate for the rights of asylum seekers and refugees. She is the Chair of the Detention Expert Health Advisory Group, an independent body providing advice to the Department of Immigration and Citizenship on the health needs of asylum seekers. She has been involved in research into the impact of immigration detention on child asylum seekers.

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Elegantly presented in 162 pages, at an unusual speed between commission and delivery, it would be an arduous task to comment on how the Houston Report itself responded to the “more than 550 submissions” the Panel had received.

However, it seems possible safely to conclude that the solution proffered by the Panel reflects the composition itself: all honourable men - no doubt, in the general sense of the word, still none of them with any experience in the law, and two of them highly influenced by a life spent in the military and the bureaucracy. If one member devoted his life to flying airplanes, another spent his time on ‘piloting’ desks. More to the point: as to the chairperson, one

would prefer not to incommode two Founding Fathers of the American Republic, Samuel Adams and Alexander Hamilton on civilian control of the military; it should be sufficient to remember Georges Clemenceau's *dictum* that even "war is too serious a matter to entrust to military men." And as to another member, one should harbour no illusion about the nature of Australian bureaucracy. It is traditionally 'conservative' - that is to say: nothing should be tried the first time for fear of creating a 'precedent'; always secretive; essentially loyal to itself first and foremost, until it was fully privatised by the Howard Government; forever mindful that Labor - even in the current phase, which is one of transvestism - is always perceived by the 'average elector' as being led by a band of incompetent amateurs, clowns who make some noise but are not expected 'to be in town for long'. Australian bureaucracy is one particularly attuned to that, skilled and represented by men accustomed to navigate the perilous waters between service to a conservative government - which has been historically the case - and survival in the murky world of the 'security industry.'

Perhaps it is safe to say that more than 'Is it right ?' the Panel asked itself 'Can it be done ?'. And what was wanted is clearly indicated by the terms of reference, given by an exasperated Government bounded by an extraordinarily malevolent Opposition, which really correctly expressed the lack of feeling of the 'ordinary Australian' for the asylum seekers. They are perceived as dirty, untrustworthy, eager to find a job, eager to please, *un-white* if not dark, and possibly threateningly Muslim - 'different', which in a 'culinarily multicultural society' stands for racist. Let there be no bones about it.

The Panel had received its marching orders from a daringly opportunistic, 'flexible', no-principle-in-the-way, prime minister who really wanted to be forced to take up and thus neutralise the obstinate position of the Opposition. In delivering what was expected, the Panel also did land a body blow to the Gillard policies to date. By way of balance, it also blew out of the water Abbott's assertion that boats can be safely towed back to Indonesia. What was wanted is what a thoughtful student of the asylum seekers plight has summed up in the policy of the KKK, meaning 'Keep them out, Kick them out, or Keep them in detention'.

What the Panel offered is a 'can do' solution, which in the end would respond to an 'out of sight, out of mind' desire on the part of the 'average Australian'.

It is perfectly understandable that the poorest of the seven attachments to the Report should be on "Australia's international law obligations with respect to refugee and asylum seekers."

Such obligations seem to be confined to abiding by *some* articles of *some* treaties and conventions, and in some cases by reference to well known provisions: the Refugee Convention was mentioned for Art. 1, on the definition of the word refugee, Art. 3 on non-discrimination, Art. 14 on residence, and Art. 33 on non-*refoulement*. The point of non-discrimination was expanded with reference to the I.C.C.P.R. (Arts. 2, 3, 17, 23 and 26), the I.C.E.S.C.R. (Arts. 2 and 3) and the Convention on the Rights of the Child (Arts. 2, 3, 10 and 24).

Heavier water was made of the United Nations Convention on the Law of the Sea (U.N.C.L.O.S.); the International Convention on Maritime Search and Rescue (S.A.R. Convention); and the International Convention for the Safety of Life at Sea (S.O.L.A.S.) Convention.

But no reference was made, for instance, to the [Convention on the Prevention and Punishment of the Crime of Genocide](#); the [Convention on the Elimination of All Forms of Racial Discrimination](#); the [Convention on the Elimination of All Forms of Discrimination Against Women](#); the [Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment](#); the [International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#); the [Convention on the Rights of Persons with Disabilities](#); and the [International Convention for the Protection of All Persons from Enforced Disappearance](#) - most of them continuously violated by Australian Governments when they come to asylum seekers and refugees..

The Houston Report was compiled over a six week period. As the Panel said: “In this time we have consulted widely on asylum issues with political leaders, other members of the Parliament, agencies and departments of government, non-government organisations (NGO s), academics and other experts as well as those in the wider community. We have also held discussions with representatives of some refugee communities in Australia and refugees who travelled to Australia more recently through irregular means. Our consultations have been conducted in many meetings and through the more than 550 written submissions that we have received.

In all these processes, we have encountered a broad cross section of views on asylum issues and on the direction that Australian policymaking should take. Those views are deeply held and have been strongly argued.

We have applied an overriding priority to addressing the complex and difficult task we have

been given.”

The main purpose of the Report is stated in the foreword as being “to propose a way forward that meets the tests of reasonableness, fairness and humanitarian need. In proposing a way forward, our guiding light has been to find practical ways in which to advance the Australian national interest in achieving progress towards the goal of more effective regional cooperation on asylum issues.”

To meet the challenge, the Panel believed “that Australian policy can, and should, be hard headed but not hard hearted; that practicality and fairness should take precedence over theory and inertia; and that the perfect should not be allowed to become the enemy of the good.”

After such flowering rhetoric, the Panel went to the contingent point: “ The loss of life on dangerous maritime voyages in search of Australia’s protection has been increasing. The number of irregular maritime arrivals (IMA s) who have arrived in Australia in the first seven months of 2012 (7,120) has exceeded the number who arrived in total in 2011 (4,733) and 2010 (6,850). The likelihood that more people will lose their lives is high and unacceptable. These realities have changed the circumstances that Australia now faces. They are why new, comprehensive and integrated strategies for responding are needed.

Those strategies need to shift the balance of Australian policies and regional arrangements to give greater hope and confidence to asylum seekers that regional arrangements will work more effectively, and to discourage more actively the use of irregular maritime voyages.”

The Panel’s recommendations were aimed at better achieving “changes in Australian policies and more active support for an enhanced regional cooperation framework on asylum issues.”; at increasing “Australia’s Humanitarian Program to assist in making regular migration pathways work better.”; and at suggesting “disincentives to irregular maritime voyages to Australia by establishing a clear ‘no advantage’ principle whereby asylum seekers gain no benefit by choosing not to seek protection through established mechanisms.”

Naturally, the Panel thought that the “recommendations put a fundamental emphasis on fairness and reasonableness. They constitute an integrated set of proposals. The incentives and disincentives we recommend complement each other. In our view, they need to be pursued in that comprehensive and integrated context as the most effective way of

discouraging asylum seekers from risking their lives on dangerous maritime voyages to Australia.”

Certain considerations underpinned the Report. They are:

i. The international community faces diverse, difficult and complex challenges in relation to the irregular movement of people across borders. In the context of those challenges, Australia is confronting a particular set of policy circumstances that are the product of realities internationally, in our region and on our borders. There are growing numbers of people seeking protection in Australia through dangerous and irregular maritime voyages. In the period ahead, the number of people seeking protection internationally, including in Asia, is likely to increase – and perhaps very significantly.

A consensus in the Australian Parliament on how to best respond to this current and prospective situation, regionally and globally, is proving elusive. Furthermore, while a regional cooperation framework to address the range of these challenges in the Asia Pacific region is both necessary and desirable, its practical development is still at an early stage.

ii. These realities and pressures engage Australia’s national interests across a broad spectrum. They engage a fundamental sovereign interest in, and responsibility for, the integrity of Australia’s borders. They engage issues relevant to the broad support in the Australian community for our Migration Program – a support which has always underpinned the Program in the past and which is fundamental to its future. They engage a focus on an international environment in which irregular migration and asylum seeking are facilitated by accessible travel, networked people smuggling operations and agents of collusion in many countries. The realities we face also engage Australia’s capacity for responding to consequent humanitarian needs, both in their own right and in the context of international humanitarian obligations which Australia has upheld over many decades. In addition, the current situation engages our national capacities in terms of building regional and broader international support for effective protection arrangements over the short and longer term.

iii. These complex and diverse challenges for Australian policymaking frame the central issue in the Panel’s Terms of Reference: to assess ‘the policy options available... to prevent asylum seekers risking their lives on dangerous boat voyages to Australia’. This issue demands a strategic and comprehensive response. Such a response needs to be hard headed but not hard hearted. It needs to be driven by a clear-eyed practicality, and by a sense of humanity as well as fairness. It needs to advance Australia’s sovereign interests but also to recognise the limitations of Australia’s capacities when acting alone on these issues. A

strategic and comprehensive response needs to reflect circumstances as they currently exist and are likely to develop rather than what they have been in the past. It needs to take account of the balance of risk, incentive and despair that drives many people to do business with people smugglers. Above all, such a response should not allow the perfect to become the enemy of the good.

iv. Australian policy settings do influence the flows of irregular migration to Australia.

Those settings need to address the factors ‘pushing’ as well as ‘pulling’ the trend toward greater numbers of dangerous irregular maritime ventures to Australia.

Australian policy settings, however, cannot resolve current challenges in isolation from the regional and international realities to which they relate. A focused and sustained response to the asylum seeker issue also needs to encompass more effective Australian strategies in the main source countries for irregular migration flows into South-East Asia and Australia; it needs to facilitate a more practical framework of shared management and responsibility involving Australia and countries in our region; and it needs to actively promote a more productive engagement by the wider international community in addressing the global phenomenon of forced displacement and irregular people movement.

v. The single most important priority in preventing people from risking their lives on dangerous maritime voyages is to recalibrate Australian policy settings to achieve an outcome that asylum seekers will not be advantaged if they pay people smugglers to attempt dangerous irregular entry into Australia instead of pursuing regular migration pathways and international protection arrangements as close as possible to their country of origin. That is why a regional cooperation framework on protection and asylum issues, reflecting a comprehensive regional approach, is so fundamentally important and such a central focus of this Report.

vi. A comprehensive regional framework to address asylum seeker issues, encompassing joint approaches and common standards on protections, processing and durable outcomes is an objective to which regional governments are committed. It is also a goal towards which progress will be incremental.

vii. Some of the building blocks on which a regional cooperation framework can be established are able to be implemented immediately; others will take time and extensive negotiations.

viii. Australia needs to be an active participant as these processes develop and gather momentum. In the intervening period, Australian policy in its own right needs to pursue a dual approach. It needs to promote incentives to encourage greater use of regular migration

pathways and international protection arrangements; and it also needs to implement more effective disincentives to irregular and dangerous maritime voyages to Australia for the purposes of seeking asylum.

ix. Australia's priorities – in our own national policies and in our engagement within our region and beyond – need to be focused on shifting the current balance of risk and incentive that makes dangerous irregular migration a preferable option for too many people.

x. At the present time, there are risks and incentives in decisions to take dangerous irregular maritime voyages to Australia – risks in the physical dangers and personal dislocation, but incentives in terms of the prospects if Australian territory is reached and protection secured. The current balance of those risks and incentives still tempts too many asylum seekers to put their lives into the hands of people smugglers.

xi. By contrast, the use of regular migration pathways and established international protection arrangements have their own risks and incentives – the risk of indefinite delay with inadequate protections and without any durable outcome, set against the incentive of possible resettlement and a new life. The balance of those risks and incentives is too often insufficient to convince asylum seekers that regular pathways are more productive than irregular ones.

xii. The shift in the balance of risk and incentive that is necessary requires a set of circuit breakers in Australian policymaking which need to operate in a phased and coordinated way at two levels.

xiii. At one level, there is a need for new measures to expand regular humanitarian pathways and make the international protection arrangements more effective.

Such measures need to build confidence and hope in established processes through genuine incentives for asylum seekers in the region to participate in needs-based, well-managed, regionally coordinated, safe, orderly and timely processing that delivers durable outcomes.

xiv. Such measures to sustain a more practical, better managed and more coordinated regional framework of cooperation, to address asylum seeking, and to counter people smuggling operations should identify and pursue common interests and shared objectives among regional countries. From Australia's perspective, these measures need to include high-level and broad-ranging bilateral cooperation with Indonesia and Malaysia in particular, and with other regional countries as well. They also need to include shifts in Australian policy settings which encompass significantly expanding and refocusing Australia's Humanitarian Program, enhancing relevant capacity building in South-East Asia as well as in source countries of asylum seeker flows, and addressing the backlog in family reunion under the Special Humanitarian Program (SHP) which risks becoming a significant factor motivating

those who choose irregular migration by boat to Australia. Australia also needs to be proactive in encouraging greater responsiveness among resettlement countries in terms of increasing the resettlement places available for those in the region needing protection.

xv. There also needs to be policy circuit breakers operating at a second level. This is required because incentives to utilise existing migration pathways and established international protection arrangements, operating in national or regional contexts or both, will be necessary but they will not be sufficient in their own right as an effective strategy to counter irregular migration flows. Circuit breakers are needed to reduce the attractiveness of Australia as a destination point for irregular migration. They are needed to reinforce a basic principle of fairness – that those who continue to choose irregular maritime voyages to Australia to claim asylum should not be advantaged for doing so over those who pursue regular mechanisms.

xvi. Incentives to use regular migration and protection pathways need to be complemented by policy measures that send a coherent and unambiguously clear message that disincentives to irregular maritime migration to Australia will be immediate and real.

Over time, a genuinely regional framework will reduce the lure of irregular maritime migration options through a common approach to the processing of claims and provision of outcomes based on need. Until such a regional framework is established in a practical way, and within a framework of appropriate safeguards, the active discouragement of irregular maritime migration to Australia needs to include the prospect of processing options outside Australia for the determination of protection claims of those who arrive by irregular means.

xvii. To support such processing within the development of a comprehensive regional cooperation framework, the Panel believes that the Australian Parliament should agree, as a matter of urgency, to legislation that would allow for the processing of irregular maritime arrivals in locations outside Australia. That legislation should also reserve to the Parliament the provision to allow or disallow the legislative instrument that would authorise particular arrangements in specific locations outside Australia.

xviii. In that context, Australia should move immediately to establish facilities in Nauru and Papua New Guinea (PNG) for the processing of protection claims by IMA s to Australia.

xix. In addition to the facilities in Nauru and PNG, Australia should also immediately pursue amendments to the Arrangement it negotiated with Malaysia in 2011. In particular, those amendments should strengthen the protections provided under the Arrangement which are relevant to the transfer of a number of IMA s to Malaysia.

xx. Other measures to discourage dangerous and irregular maritime voyages to Australia should include changes to family reunion arrangements as they relate to IMA s in Australia, a



more effective focus on the return of failed asylum seekers to their home country and more sustained strategies for the disruption of people smuggling operations both in Australia and abroad. A thorough review of the efficacy of Australian processes for determining refugee status would also be timely.

xxi. The Panel is of the strong view that there are a range of conditions that need to be fulfilled for the safe and lawful turnback of boats carrying asylum seekers. The Panel does not believe those conditions currently exist, although they could at some stage in the future, in particular if appropriate regional and bilateral arrangements are in place.

xxii. In this policy agenda designed to shift the balance of risk and incentive in favour of regular migration and against irregular options, the engagement of governments and civil society – in Australia, in our region and internationally – will become even more important. This engagement needs to embrace more comprehensive and cooperative arrangements in relation to policy development processes and the implementation of policy decisions. In addition to effective disincentives to irregular boat voyages, there needs to be greater hope and confidence that applying through the regular processes of international protection, including in source and transit countries, can work better and more quickly.

xxiii. The costs of the recommendations made in this Report are set out in Attachment 11. These costs need to be offset against savings that the Panel believes will be made from expenditures currently incurred as a result of managing the flow of unauthorised arrivals in Australia. The forward estimates presented in the 2012-13 Budget estimate such expenditure incurred by the Department of Immigration and Citizenship (DIAC) alone over the period 2011-12 to 2015-16 inclusive to be at around \$5 billion assuming that arrivals remain at around the level of 450 per month from 1 July 2012. With the levels of irregular arrivals averaging over 1,300 per month since April 2012, the Panel notes that if this rate of increase were to be sustained the costs of dealing with these IMA s would likely be a significantly larger amount than the costs of the recommendations in this report.

xxiv. In the Panel's view, the recommendations in this Report will promote greater efficacy, fairness and good management in Australian policymaking on protection and asylum issues. Our recommendations will include new costs; but they will also, in our view, result in significant savings in expenditures currently being incurred.

xxv. The need for circuit breakers, and effective follow through, in Australian and regional policymaking on the asylum seeker issue is an urgent one. Too many lives have already been lost. Too many others are in danger of being lost. Clear and sustained policymaking, in Australia and at a regional level, are required to change the balance of risk and opportunity.

Such an outcome will advance Australian national interests on this issue. It will strengthen effective regional and international cooperation. It will more effectively address humanitarian needs and it will also save lives. These are the objectives to which the recommendations in this Report are directed.”

The Panel’s Report presented an ‘integrated blueprint’.

The Panel had accepted the reality of population flows across the globe with people fleeing dreadful situations of persecution. Its ultimate aim is to set up a regional system which provides a genuine alternative pathway for asylum seekers who otherwise will attempt to reach get refugee on leaky boats seeking a durable solution to their woes.

Perhaps the Panel did not realise that there are objective difficulties in realising a regional solution for a regional problem and yet maintain respect for the Refugee Convention: only three countries near Australia have ratified the Convention: Timor Leste, Papua New Guinea and Nauru.

The Panel strongly endorsed the need for offshore processing in the short term. The Panel conceded that the so-called ‘Malaysia Solution’ as negotiated by the Gillard Government falls short and should not be resurrected until it can be ‘built on further’.

In particular, the Panel noted the concerns of many Australians that the Malaysia agreement is not legally binding and is - at best - very vague on standards of treatment especially for unaccompanied minors. The Panel believed that “the operational aspects need to be specified in greater detail” and that “provisions for unaccompanied minors and for other highly vulnerable asylum seekers need to be more explicitly detailed and agreed with Malaysia.”

The Panel insisted on the need for “a written agreement between Malaysia and UNHCR.” This is particularly welcome for those Australians who have been straining to understand the diverse nuances in media interviews by U.N.H.C.R. personnel insisting that they had not endorsed the deal in the first place.

The Panel also saw the need for “a more effective monitoring mechanism” of human rights protection in Malaysia, including participation by Australian “senior officials and eminent

persons from civil society.” The chances of Malaysia agreeing to this interference with its sovereignty would not be great. So it will be some time before Malaysia will be a serious possibility. Meanwhile, the Panel urged a return to the 2001-2007 ‘Pacific Solution’, transporting asylum seekers from boats to Manus Island and Nauru. The Opposition would feel vindicated by this recommendation. But there is an enormous practical problem as well as an ethical dilemma. The best advice to the Australian Government was that Papua New Guinea and Nauru would not provide the deterrent that the Government expected from any offshore arrangement.

This is where the Panel’s recommendations seemed fairly inconsistent. On one hand, the Panel saw Manus Island and Nauru as such unattractive options that asylum seekers will decide not to disburse large sums of money to take a boat in Indonesia headed for Australia. On the other hand, Australia would retain responsibility for asylum seekers while they are processed on Manus Island and in Nauru, and - in addition - Australia would be the only country responsible for providing resettlement places.

How to advance a solution which would remain respectable was a huge task for the Panel. It is for the purpose that the Panel recommended that the asylum seekers transported to Manus Island and Nauru would “be provided with protection and welfare arrangements consistent with Australian responsibilities under international law, including the Refugees Convention.” In particular, for Nauru, the Panel specified:

- treatment consistent with human rights standards - including no arbitrary detention;
- appropriate accommodation;
- appropriate physical and mental health services;
- access to educational and vocational training programmes;
- application assistance during the preparation of asylum claims;
- an appeal mechanism against negative decisions on asylum applications which would enable merits review by more senior officials and N.G.O. representatives with specific expertise;

- monitoring of care and protection arrangements by a representative group drawn from government and civil society in Australia and Nauru;
- and providing case management assistance to individual applicants being processed in Nauru.

However - and this is most important - the Panel recommended that the *Migration Act* should be amended so as to enable the Government to declare a country for offshore processing, and that such designation of that location would be ‘a disallowable instrument’. So the Government would be free to name an offshore processing country without Parliament stipulating any criteria, although either House of Parliament could be able to disallow such a designation; there would be no need for prior parliamentary approval nor any prospect of review by the courts.

The Panel’s recommendation would entail repealing s.198A of the *Migration Act* which was inserted by request of the Howard Government in 2001. This provision required the Minister to be satisfied that appropriate protection and welfare measures are in place. In 2011 the High Court took upon itself to establish whether in law and in fact the offshore country - in the case, Malaysia - did provide the relevant protections. Such a repeal was among the least commendable views of the Panel.

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In the early morning of 13 August 2012 the Panel briefed both Prime Minister Gillard and the Opposition on its recommendations.

The Government had received the Houston report at 7 a.m. Labor Caucus discussed the Houston package. Left members of Parliament had raised objections to indefinite mandatory detention on Manus Island and Nauru, but their objections had been voted down. The same members had requested as delay to give Caucus time to consider the Report, but their motion had been lost. The Government simply agreed to a proposal for Caucus to monitor the detention regime.

Then Ms. Gillard announced that her government had accepted all the Panel's recommendations. "What this report is calling on parliamentarians to do is to compromise and to act. This report is telling us not to stay in our fixed positions but to act and get things done." she said. "When our nation looks at what is happening at sea, too many lives have been lost." She also said: "We want an outcome, here. We want change. We do not want pedantry and politics. That is the spirit the government is taking into this."

She added that the Australian people were sick of the long-running policy deadlock, after earlier legislation was rejected by the Senate in June.

"They're over it, I'm over it, we're all over it. It's time to get something done." she told reporters in Canberra. Ms. Gillard said that agreeing to return to the Howard Government policies scrapped in 2008 was not easy. "But I tell you what is a harder thing - that is watching more people drown, and we are not going to do that."

After more than a year of clinging to the 'Malaysia Solution' project and refusing to adopt Nauru without the people swap, during which time almost 11,000 asylum seekers had arrived and almost 300 had drowned, the Prime Minister said that she would introduce legislation immediately to reopen the Howard Government processing centres.

It was a 'splendid' brilliant ploy by Prime Minister Gillard: appoint a committee of 'experts' whom she 'knew' would always recommend the vile and inhumane offshore processing of refugees. If they recommended the 'Malaysia Solution' then all the better. If they recommended Nauru then that would give Labor the cover to retreat. The 'experts' recommended dumping refugees on Nauru and in Papua New Guinea. They did not rule out Malaysia; they just said it needed more work.

Essentially what the Panel served up is the Opposition's deterrence policy, with a few sops thrown in about increasing the humanitarian intake a little. It is basically a policy of punishing the refugees. It strips asylum seekers of the meagre rights they currently have. This is worse than Howard's 'Pacific Solution'.

There will be no time limit on how long asylum seekers can be kept on Manus Island or in Nauru. This is to ensure they will spend longer there than they would have in Indonesia or

Malaysia. Given that some refugees rot their lives away in Malaysia, asylum seekers could be held indefinitely in Australia's concentration camps on Manus Island or Nauru.

Those coming by boat will also lose family re-union rights.

Labor, Left and Right, seemed joyfully and joyously implementing a vile policy worse than anything Howard dared introduce.

The Houston Report disgracefully but not surprisingly recommended turning back the boats where that is legally and physically possible. It is not yet, so Mr. Houston wants the legal and other 'niceties' repaired to ensure it can be done.

At the heart of the Report - and of Labor - is this notion that harsh words and action on the part of Australia will stop the boats. But people fleeing war, civil war, dispossession, rape and the like are desperate. A journey of a few days across the sea to a better life eventually, even if it puts their lives at risk or means they will spend time in Nauru before coming to Australia, is better in their eyes than being killed. Of course indefinite detention is a 'natural broth' for mental illness so, once there, many of them may try to kill themselves to escape a life of indefinite imprisonment for no crime.

Some of the refugees are from Iraq, or Sri Lanka. Others come from Afghanistan. Often the latter are *Hazaras*, a persecuted minority under the Karzai Government that 'western' troops - including Australian forces - have imposed on the people of Afghanistan. As head of Australia's Defence Force, Angus Houston was one of the planners and organisers of the invasion strategy. Withdrawing 'western' troops from Afghanistan would help stop one of the reasons for refugees fleeing from there to Australia. Instead of recommending ending 'western' invasions, the Panel recommended more cruelty on the very people the invasions forced to flee their homes.

Given that both the Government and the Opposition are in favour of brutalising asylum seekers, the Panel was never going to recommend a sensible, caring approach to caring for refugees.

If it really wanted to save lives at sea, Australia could process all of the asylum seekers in Indonesia - about 4,000 and then turn to the 100,000 in the hell holes of Malaysia, who present a different problem from the few in Indonesia.

If Australia cannot process them there, then it could process them onshore, not by forcing them to flee in rickety boats to Australia but by sending Australian ships and planes to bring them to Australia for processing.

Of course neither this Government, nor a future Abbott Government would do that. Despite their proclamations, when it comes to the votes, they are the silent leaders in racism - and the followers, too. Their policies are driven by the desire to appeal to and deepen the crimson thread of racism which runs through sections of the 'working' as well as of the hardly defined 'middle' classes. For some in an alienated population in an alienated society, attacking others restores a seeming sense of their own worth.

Only the Greens would absolutely oppose the recommended legislative changes. But they are few against the collusion of the two weighty parties of the Westminster System.

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Events developed quickly.

At the beginning of a press conference at midday of 13 August, Mr. Houston, speaking for the Panel, emphasised its main recommendation for offshore processing in both Nauru, Papua New Guinea and Malaysia while strengthening safeguards and accountability for the people swap deal.

Mr. Houston said: "We recommend a policy approach that is hard headed, not hard hearted."

Given that more than 100 boats carrying over 7,500 suspected asylum seekers have arrived in Australia in the first eight months of 2012, after the Government failed to have enacted legislation aimed at deterring them by sending them to Malaysia, and that some 964 asylum seekers and crew had lost their lives at sea while trying to making it to Australia since late 2001, with 604 of these perishing since October 2009, it was appropriate for Mr. Houston to say: "Like all Australians, we are deeply concerned about this tragic loss of life at sea." and "To do nothing is unacceptable."

Boat arrival to Australia is dramatically summarised in the following chart:



Mr. Houston emphasised that boat arrivals should “gain no benefit” over refugees who are accepted in government programmes.

Had the Government adopted the 22 recommendations of the Panel it would also have removed asylum seekers’ automatic right to apply to sponsor family once they have been granted a protection visa. This measure was reported the previous week and it was seen as one which would free places for refugees accepted in camps outside Australia to bring relatives after current places in a special humanitarian programme were swallowed by boat arrivals.

The option of towing boats back to Indonesia had been ruled out for the time being but the Panel noted that the situation could change with appropriate regional arrangements.

The Panel called on the Government to work closely with Indonesia, a transit country for many boat people, and Malaysia to stem the influx of maritime arrivals as well as lift its annual humanitarian intake. Neither country has subscribed to the Refugee Convention.

If one looks at the map of southern Asia, one may notice that from the western border of Pakistan all the way to Papua New Guinea and Timor Leste at the South and the Philippines



at the North, no country except Cambodia has signed the Refugee Convention. Cambodia is out of the way from any flux of refugees, many of whom are in Indonesia but most of whom are in Malaysia.

Furthermore, the Panel seems to have taken no account of what Shane E. J. Prince, a Sydney barrister, submitted with reference to Indonesia.

First of all, claims for asylum made from Indonesia are not numerous.

U.N.H.C.R. figures show that the numbers of people seeking asylum in Indonesia have not been higher than 6,600 since 1994 - excluding refugees from Timor Leste. In 1997 and 1998 there were only 69 and 109 people claiming asylum respectively. These low figures were not due to the Howard Government's vicious *Operation Relex*, which was not in place until 2001. *Operation Relex* involved the use of the Australian Defence Force for border protection in the country's northern approaches conducted between 2001 and 2006. The operation was instigated following the *Tampa affair* in September 2001 and its focus was on 'illegal immigration.' Assets of all three services of the Defence Force were committed to the operation to prevent the arrival of Suspected Illegal Entry Vessels in the Australian migration zone.

At the end of 2010 only 811 registered refugees were awaiting resettlement in Indonesia, with 2,071 waiting in the pipeline for processing by the U.N.H.C.R. These numbers are relatively stable. There were approximately 2,000 asylum seekers in Indonesia in 2009. By the end of 2011 the U.N.H.C.R. figures show that there were only 4,239 asylum seekers and refugees in all of Indonesia.

Between 2001 and 2010 only 560 refugees were resettled in Australia from Indonesia, an average of 56 per annum. During the same period approximately 130,000 places were allocated for refugee and humanitarian visas. There are only two U.N.H.C.R. staff in Indonesia to process all claims for refugee status.

The number of refugees taken from Indonesia in 2009 were 109, and in 2010 were 457. In the first five months of 2012 to 31 May 2012 only 24 refugees were resettled in Australia via Indonesia. No wonder refugees and asylum seekers take a huge risk and get on a boat. They get sick of waiting !

Nauru or Papua New Guinea will have no deterrent effect - for asylum seekers they will always be preferable to the death camps at home. Instead of punishing people for exercising their legal right to seek asylum, why not: - bring those registered as refugees in Indonesia to Australia by plane or safe boat - increase the number of staff in Indonesia processing claims by asylum seekers, and - make the maximum waiting time in Indonesia two years ? If there is a speeding up of the processing of claims, and asylum seekers know that the maximum time they may have to wait is two years, the incentive to get on a dangerous boat voyage is reduced.

Furthermore, the large number of asylum seekers in Malaysia and Thailand are overwhelmingly from Myanmar - 93 per cent and 98 per cent, respectively - and they have never been able to enter Indonesia or to reach for boats.

The Panel said that the Nauru and Manus Island centres should be re-established as soon as possible as part of a "comprehensive regional network." "Over time, a comprehensive regional framework will reduce the lure of irregular maritime migration but until then, the panel believes Australia needs to include the prospect of processing options outside of Australia." the Report said.

"To support this, it is the panel's view that the Australian parliament should agree, as a matter of urgency, to legislation that will allow for the processing of irregular maritime arrivals in locations outside Australia."

The Australian Government had long resisted re-opening a processing facility on Nauru and this was a blow to the Government's position.

The Panel also said that the Government's Malaysian deal should "be built on further, rather than being discarded or neglected."

The so-called ‘Malaysia Solution’ would have seen boat people arriving in Australia transferred to the Southeast Asian nation, with Australia resettling thousands of that country’s registered refugees in return. The proposal was scuttled by the Opposition and the Greens, who refused to pass laws allowing off-shore processing, prompting the government to ask the Houston Panel to review the policy in hopes of breaking the political deadlock.

And rather than dumping the Government’s controversial and illegal ‘Malaysia Solution,’ the report recommended building on the deal “through high-level bilateral engagement focused on strengthening safeguards and accountability.”

Under the so-called ‘Malaysia Solution,’ Australia would have sent 800 asylum seekers to Malaysia for processing each year in exchange for 4,000 confirmed refugees.

However, the High Court ruled the deal invalid in August 2011 on the grounds that, as a non-signatory to the 1951 U.N. Refugee Convention, Malaysia has no legal obligation to protect asylum seekers, something required under Australia’s *Migration Act*.

Mr. Houston said that turning back boats heading towards Australia “can be operationally achieved” - but only with certain conditions attached. The conditions are not met at the moment - but could be in the future. As he said during a long press interview, he was in Defence the last time the Government tried to turn boats back and he has a good appreciation of the issues involved.

On eight occasions between 2001 and 2003, the Navy attempted to return boats to Indonesia waters. Five of those boats were eventually returned and three sank during the interception process, forcing the Navy to rescue the passengers and put them into Australian detention facilities. A 2010 document from Australia’s Border Protection Command released under Freedom of Information laws earlier in 2012 warns that a turn-back policy would risk virtual hand-to-hand combat between navy sailors and asylum seekers. The document warns that such a policy would lead asylum seekers to sabotage their boats to get rescued and be processed on Australian soil.

But the Panel did not rule out the possibility that tow-backs could work if there were cooperation from Indonesia. “Turning back irregular maritime vessels carrying asylum seekers to Australia can be operationally achieved and can constitute an effective disincentive

to such ventures, but only in circumstances where a range of operational, safety of life, diplomatic and legal conditions are met.” it said.

Mr. Houston said that the humanitarian programme should be immediately increased from 13,750 to 20,000 and that it jump to 27,000 over the coming years. He said a family migration programme should jump 4,000. He said that there was a large backlog in the programme, which was acting as an incentive for ‘irregular’ migration by family members.

Current reunion concessions for immediate family - where they are sponsored by a person who arrived by boat - should be removed, he said. The Panel also recommended that people who arrive by boat should not be eligible to sponsor family under the Special Humanitarian Programme. “Those who arrive by irregular maritime means who seek to bring family to Australia will need to do so under the existing family stream of the migration program.” Mr. Houston said.

The Panel found concerns with the Malaysia deal could only be considered if protection for asylum seekers was better addressed.

Mr. Houston said that Parliament needed to agree as a “matter of urgency” legislation to allow offshore processing to reopen Nauru and Papua New Guinea processing centres immediately. He described putting the Report and recommendations together as challenging. He said his recommendations addressed the challenges. His view was that onshore processing encouraged people to get onto boats.

“At the moment, onshore processing is seeing a very big, in my view, pull towards Australia. We’re seeing increasing numbers of boats arrive. It is my view that unless we do something different ... the problem is just going to get worse.”

The reaction from the Australian Greens was immediate. They branded the recommendation to reopen asylum seeker processing centres on Nauru and in Papua New Guinea as a return to the “bad old days” of the Howard Government.

Greens Leader Christine Milne labelled most of the 22 recommendations from the Panel as cruel and disappointing, and likened them to the so-called ‘Pacific Solution’ of processing illegal boat arrivals offshore. She said that the recommendations took away people’s human rights and offered cruelty to people most in need. “That is the proposition that John Howard

put forward.” Senator Milne said. The Greens would not be party to something which was cruel to people and caused them more pain than they had already suffered in their journey as refugees, Senator Milne added.

The Greens welcomed the recommendation of increasing the number of humanitarian places, but condemned offshore processing. “This is about a policy that strips out legal protections in Australian law.” said Senator Milne.

Senator Milne reiterated that the Australian Greens will not be party to something which is cruel to people and “sets up a chain of detention centres right across the Pacific.”

Her colleague Sarah Hanson-Young said that the proposed family reunion changes would unfairly hurt unaccompanied minors who will suffer “years and years of torment locked up on a remote island only to finally be found to be genuine refugees.” This is about “the harsh, the cruel, the mean policies of the Howard Government.” she said.

The Refugee Action Coalition strongly condemned the Houston Panel’s recommendations for offshore processing.

“Mr. Houston and his colleagues had an opportunity to listen to the experts, escape the major parties’ persecution of refugees and inject reason into the asylum seeker debate.” said Nick Riemer, spokesperson for the Refugee Action Coalition.

“But the Panel has made no recommendation that will improve the situation for refugees who have no other choice than to get on boats. All we have seen is a return to the cruelty and inhumanity of the policies of the past.

If the Panel’s arrangements are implemented, refugees will suffer and languish on Nauru and Manus Island, just as they did under the Howard Government. The only people these recommendations will help are the major parties.

The Panel has claimed to be motivated by humanitarian considerations, but all its recommendations are about outsourcing Australia’s responsibilities to poorer, less-equipped neighbours. People desperate enough to sacrifice everything to get on a boat deserve our help. But the Panel wants to shunt them off to places in our region where they have no hope of

living in safety. The only place that can give refugees the security and support they need is Australia. Refugees should be welcomed into the community.” Mr. Riemer said.

“The Panel stressed that its aim was to provide incentives for ‘regular pathways’. But by giving the green light to the Malaysia Agreement, the Panel has not provided any credible regular pathway for refugees to get to Australia. Would Australia really turn away asylum seekers fleeing the desperate circumstances in Syria ?

While the panel recommended increasing Australia’s overall refugee intake, without guaranteed resettlement to Australia, refugees will still have no alternative but to resort to boats. As the direct arrival of Tamils to Australia shows, war, torture and persecution are not the kinds of situation that allow regular pathways. No one with any knowledge of refugee movements thinks that there is any way to prevent dangerous ocean crossings.

The no advantage provisions for boat arrivals are extremely callous. The Panel’s real attitude is revealed by the fact that they haven’t excluded turning back the boats.

Refugees quite simply have the right to risk their lives at sea if they think that those journeys are worth that risk. Six hundred people have died at sea, but thousands have successfully reached Australia. Howard’s ‘Pacific Solution’ didn’t save lives either. The only way to save lives at sea is to decriminalize people smuggling, to open Australian processing centres in the region, and to massively increase our humanitarian intake without making vulnerable boat arrivals pay for it.

To add insult to injury, the one positive measure the Panel proposed - to de-link the onshore and offshore humanitarian programs (recommendation 21) has been left for two years to review.”

Other human rights groups said that the recommendations were in breach of Australia’s international legal obligations.

“Penalising people based on their mode of arrival is clearly in breach of [Australia’s] obligations.” Dr. Graham Thom, of Amnesty International, told A.B.C. television. “We are only talking about people who come by boat, we’re not talking about the thousands of people who come by plane and seek asylum in this country. What we are doing is penalising one

particular group and actually taking them to a very remote place where we know they've been damaged in the past and holding them hostage to stop other people from coming.”

Dr. Thom, released a statement saying that the organisation was appalled by the recommendations:

“Sending asylum seekers to places like Malaysia, Nauru and Papua New Guinea is unacceptable and a complete outsourcing of Australia’s human rights obligations. It is shocking to see the panel favour punitive measures that deliberately hold vulnerable people hostage, separate families and leave them in limbo.”

Ms. Rachel Ball from the Human Rights Law Centre said that the recommendations are a violation of Australia’s international legal obligations:

“The deterrence policies are unnecessary. Policies such as offshore processing, the Malaysia solution, withdrawing family reunion rights and boat turnbacks are cruel responses to the desperation of asylum seekers who make the boat journey to Australia.” she said in a statement. ... “These policies are also unnecessary, given that the greatest disincentive to making the boat journey to Australia - the risk of death at sea - already exists.”

Human rights lawyer David Manne told *Sky News* the recommendations would violate Australia’s legal commitments to refugees:

“The fact is, as the High Court ruled, that we have legal commitments to ensure that people who are in danger and come seeking our help are protected here and not sent to situations where there are inadequate protections or safeguards. All we would be doing if we pursue offshore processing in this way is sweeping the dangers from our doorstep to dangers elsewhere, it won't essentially provide a proper plan of action.”

The Coalition had incessantly claimed that re-opening a processing centre on Nauru would quickly solve the issue. But Professor Mary Crock, an expert on refugee and migration law from the University of Sydney, said that is not the case: “In fact I think that one of the reasons why they don’t want the Government necessarily to adopt all of their policies is that they’ll be shown up as being a hollow claim. The tragedy for me, I think, is that we are just riding roughshod over our international legal obligations and we're making a right mountain out of a molehill.”

At any rate Nauru's Government was also keenly waiting for the Report, though a spokesman said that it had not been contacted by the Panel. This circumstance is fairly important, because the same government estimated that it would take at least three months to restore or build a facility.

Amnesty Australia said that the Government's initial response to the Panel Report showed short-term political gains trumping Australia's obligations under the Refugee Convention.

"Introducing policies like offshore processing, with the 'no advantage' rule which will see refugees on Nauru languish for years, will not make refugees safer but rather undermine prospects for a genuine regional solution for refugees," Dr Graham Thom said.

"This announcement sends a resounding message to the region that protecting refugee rights is something to be avoided at all costs." ... "Ultimately, this will mean that more refugees in the Asia Pacific face torture, exploitation, and even death." ... "The tragedy of asylum seeker deaths at sea must be addressed, but not by punishing people who have already fled torture and persecution." ... "Whilst we welcome the initiatives that genuinely increase protection for refugees in the region, Amnesty International is very concerned with the punitive measures, such as offshore processing, that the panel's report has prioritised. ... "Amnesty International urges parties not to support any of the recommendations that blatantly breach Australia's human rights obligations."

Ms. Pamela Curr, of the Asylum Seeker Resource Centre, described the report as "a comprehensive package of harm." ... "People will still drown. What this [report] is making sure is that people drown elsewhere and don't drown right in front of us." she added.

The Asylum Seeker Resource Centre said that the options presented by the Panel do not reflect the recommendations by the hundreds of submissions made to the expert panel.

"We are in shock." Ms. Curr said. "The only way people will be able to leave Nauru or any place of offshore processing is through death or a life threatening illness. It did not have to come to this. There are other ways as presented by the majority of the over 300 submissions to the expert panel." ... "The recommendations are based on the premise of a no advantage test for those who come by boat. If you arrive by boat you will not be eligible for family reunion and offshore processing is at the heart of the panel's recommendations." ... "The



recommendation to send asylum seekers to Nauru, Malaysia and PNG will come at a huge moral and economic cost to Australia – not to mention the human cost to the individuals sent away. The proposals are also in breach of our obligations under the refugee convention as the recommendations seek to punish those seeking asylum based on mode of arrival. It is worse than we expected.” she said.

Asylum Seeker Resource Centre Patron and former Prime Minister, Malcolm Fraser said deterrence has not worked in the past and will not work in the future. “In six pages and 22 recommendations, the expert panel has shredded the principles of the Refugee Convention.” ... “The panel rewrote the terms of reference - from saving lives to deterring people to seek asylum in Australia. Asylum seekers rightly expect us to offer them protection. We rightly expected the expert panel to hold this protection at the heart of their recommendations. Sadly, we have been disappointed.” Mr. Fraser said.

The Uniting Church in Australia expressed its disappointment in the recommendations of the Panel and called for a new beginning in the national debate on asylum seekers. “The Expert Panel report is another fork in the road in this vexed debate.” National Director of the Uniting Church's justice unit, Uniting Justice Australia, Rev. Elenie Poulos said.

“As a representative of a Church that has long advocated for a more compassionate treatment of asylum seekers, we cannot welcome the re-introduction of offshore processing to Malaysia, Nauru or Papua New Guinea where the care of vulnerable asylum seekers and refugees cannot be assured.” ... “What we can do is to urge all parties in this debate to reconsider the principles of compassion and protection in what has been an ugly conversation. For too long the debate has focussed on punishment and a false logic of deterrence. The Committee emphasised a ‘no advantage deal’ for asylum seekers arriving by boat. This serves only to punish people based on their method of arrival here – an approach that lacks compassion and breaches our international obligations.”

The Uniting Church in Australia said that it is a long-standing supporter of onshore processing, community placement for people on bridging visas, and an increased humanitarian intake. “The Report’s focus on ‘regular pathways’ ignores the reality faced by hundreds of thousands of refugees languishing in horrendous conditions in Malaysia.” ... “While we welcome the Special Humanitarian Program being increased by 4,000 places, removing current family reunion concessions will devastate families who have already

endured so much. Increasing the Humanitarian Program places to 20,000 will begin to alleviate the pressures on our regional neighbours, but unless we delink onshore refugee claims from the Humanitarian Program, then asylum seekers arriving by boat will continue to be demonised.”

The U.N.H.C.R. cautiously indicated that it would need to study in more detail the proposals for offshore processing in Nauru and Papua New Guinea. “The efficacy and integrity of such proposals will need to be assessed against their ability to deliver effective protection outcomes to refugees identified as needing protection under international law, not least through the 1951 Refugee Convention to which Australia is a party.” it said in a statement. The agency agreed with the Panel’s view that there are no quick or simple solutions to the problem of boat arrivals.

By late afternoon of 13 August the Prime Minister Gillard was expected to comment on the report and its recommendations.

Hours after the Report was released, Ms. Gillard had given her in-principle support to all its recommendations and said that Parliament would meet the following day to amend the earlier rejected bill to include the provision for processing centres on Nauru and Papua New Guinea. “We will also move to immediately implement the recommendations on family reunion.” she added.

Opposition immigration spokesman Scott Morrison said that the Panel’s recommendations supported the current Coalition policy. “The Houston Panel has green-lighted Nauru and they have red-lighted Malaysia and the people swap in its current form.” he said. The findings also “dispelled the nonsense that it is impossible to turn boats back.” he added. “The vast majority of these measures can be introduced as we speak (and) don't require legislation. They just require a government that is prepared to listen and to fix the mess that they have created.”

Asked whether the Coalition would be prepared to support the Malaysia arrangement, if the legally binding safeguards were put in place, Mr. Morrison said: “That is a massive big ‘if’ and one that the government has actually told me directly to my face the Malaysian government would not accept.”

Mr. Morrison said that the Panel had endorsed the deterrence policies long advocated by the Coalition. “In particular the proposal to get on with the job of putting Nauru in place.” he said.

The Prime Minister had used the cover of the Report to climb down from her previous insistence that the opposition back the Government’s ‘Malaysia Solution’ as a condition of re-establishing offshore processing on Manus Island and Nauru. The Government would immediately introduce legislation which would authorise offshore processing on the mentioned locations. “If people want to put up a banner [saying] this is a compromise from the government, dead right, in order to start saving lives.” Ms. Gillard said of the dramatic policy shift on Manus Island and Nauru.

Government and Opposition remained as divided as ever over the Malaysia people swap, the re-introduction of temporary protection visas and increasing Australia’s humanitarian intake.

The Prime Minister said that the proposal to process asylum seekers offshore was different from previous efforts, because asylum seekers would be forced to spend an equivalent amount of time on either Manus Island or Nauru as they would have spent waiting in a source or transit country under regular arrangements. She said that those arriving on boats would also have no greater claim to family reunion than those arriving via regular processes.

Both changes were designed to reduce the incentive to pay a people smuggler and take a dangerous boat journey.

Ms. Gillard declared that the time for politicking was over and the Panel’s package would ensure “you don’t get a better deal if you get on a boat.”

Is sending asylum seekers to Nauru and Papua New Guinea the victory that Opposition leader Tony Abbott did not want ? This is a question which might be asked after Mr. Abbott’s puzzling silence following the release of the Panel Report.

But what was a policy first sunk by the High Court and then by the Opposition in refusing to allow asylum seekers to be sent to Malaysia may be a sticking point. The Malaysian option was regarded by the Panel as a solution. But there are qualifications, that the Prime Minister has skilfully decided to postpone. Ms. Gillard was unable to forge an acceptable policy to break what she called “the people smugglers’ business model.”

She was now speaking as if she had found her own way. In fact it was her Panel of ‘experts’ which had found a true compass for her to follow.

Ironically, although Mr. Houston denied his Panel was motivated by any political considerations, the outcome would rob Mr. Abbott of his policy wedge against the Government, while giving him the victory he claimed to want.

Mr. Houston “fiercely defended the Panel’s independence.” at a press interview of 13 August. “At no time did we see our job as being to broker a political deal.”

As if to underline that sentiment, the Houston Report sought to explode the national deadlock by attacking dearly held positions of the Left, the Right and the Centre of Australian politics. The Report delivered solid and embarrassing blows to many of the entrenched policy positions of Labor and the Coalition. It effectively invited both major parties to retreat and reassess their position in what the Panel regarded as the greater national good. It was a position that Labor was only too eager to embrace, not least because it was trapped in a political *cul-de-sac* on asylum seekers from which there was no obvious escape.

Prime Minister Gillard had been so desperate for a circuit-breaker on the issue that her government all but abandoned itself to the Panel’s findings before it knew precisely what they were. For Labor, the Panel’s recommendations provided a fig leaf for what is a historic retreat on policy. The Government’s in-principle acceptance of all 22 of the Report’s recommendations meant that Labor was embracing a policy which was bearing almost no resemblance to that introduced by Prime Minister Kevin Rudd when he sought to dismantle the Howard Government border protection policies in 2007-2008.

By way of consolation, the political pain for the Gillard Government of such an inglorious policy retreat was lessened by the fact it had now wedged the Coalition into an uncomfortable corner.

For the Coalition the Report’s recommendations were equally problematic on several levels. They called for the longer term pursuit of the ‘Malaysia Solution’, that the Coalition opposed on the grounds that Malaysia is not a signatory to the Convention on Refugees. The Panel further challenged the Coalition position by calling for Australia to strike deals with other countries in the region which are not signatories to the Convention on Refugees. The Panel

also rejected the Coalition's plan to use the Navy to turn back boats, saying that the appropriate legal, humanitarian and diplomatic conditions are not in place to allow for the safe turn-around of boats. "The conditions necessary for effective, lawful and safe turn-back of irregular vessels carrying asylum-seekers to Australia are not currently met, but this situation could change in the future, particularly if appropriate regional and bilateral arrangements are in place." the Report said.

The fundamental 'philosophy' of the Report is that asylum seekers who arrive by boat should not gain an unfair advantage over those who seek to arrive through traditional means. "The balance of risk and incentive must be shifted . . . away from dangerous maritime migration." said Mr. Houston. But he also warned that the package of measures should not be tampered with. "This is an integrated package to be looked at as a whole." he said. "You wouldn't want to mess with the balance of incentive and disincentive," or else it may not work.

Arguably the weakest aspect of the Panel's findings is its optimism about the diplomatic negotiations required to win support in the region for its measures. As Mr. Morrison said, so far Malaysia has been reluctant to agree to extra safeguards for asylum seekers held in that country.

There is also no guarantee that Indonesia will agree to a range of proposed measures for closer co-operation on asylum seekers, an issue which remains relatively low on Jakarta's list of political priorities.

During the press conference on 13 August, Prime Minister Gillard dismissed a journalist's question about the likelihood of psychological damage being inflicted on the detainees. "First and foremost I'd say stay where you are, don't move: message number one." she declared Ms. Gillard declared cynically. "Don't get yourself to Nauru in these circumstances." she threatened. And, after explaining that refugees could agree to be deported to their country of origin instead of waiting indefinitely to be permitted into Australia, Ms. Gillard continued: "I am not trying to shy away from the toughness of this policy, but if I can put a rhetorical question ... what's the mental health trauma for that person who lost six of their relatives when a boat went down at sea ?"

No one asked any question as to the legality of what had been proposed and accepted. The sole reference to the law was made by Prime Minister Gillard, when she ridiculed “lawyers’ games about working with legislation.”

The Prime Minister’s tough talk was supported by Immigration Minister Chris Bowen, who warned people smugglers: “From this point forward, anybody who comes by boat runs the risk of being transferred to an offshore processing place.” Mr. Bowen had used tough words before. In 2010 he had said that the ‘Pacific Solution’ was a “cynical, costly and ultimately unsuccessful exercise introduced on the eve of a federal election.”

Full implementation of the Panel recommendations would cost \$1 billion a year, including \$1.4 billion over forward estimates for increasing the refugee intake, \$800 million for offering more family reunion placements, \$1.4 billion to operate Nauru for 1500 people, \$900 million for 600 at Manus Island and \$80 million for the Malaysian deal.

As to the cost of implementing the recommendations, the following table is illustrative.



The Panel warned the \$5 billion budget over the forward estimates would be blown anyway, with the 450 average arrivals budgeted for increasing to an average of 1,300 a month since April.

If that flow continued, the cost of managing the influx would be greater than the \$1 billion a year to reopen Nauru and Manus Island and implement the other measures.

One of the Panel's recommendations dealt a blow to the Australian Government's Malaysia people swap, deeming the deal not yet up to protection and security standards needed. After more than a year of clinging to the deal and refusing to adopt Nauru without the people swap, Prime Minister Gillard said she would move immediately to reinstate the Howard Government processing centres in Nauru and Manus Island.

Ms. Gillard said that she would not claim a 'victory'. "I will compromise in order to enact the recommendations of this report." Ms. Gillard said. "What this report is calling on parliamentarians to do is to compromise and to act. This report is telling us not to stay in our fixed positions but to act and get things done." she said. "When our nation looks at what is happening at sea, too many lives have been lost."

\* \* \*

The Labor Government was readying itself to work with the Opposition Liberal-National Coalition to enact legislation which would reinstate the Howard Government's so-called 'Pacific Solution'.

Under it, refugees would again be illegally deported to Nauru and Papua New Guinea, where they would be detained indefinitely, potentially for decades. The new measures would be openly flouting international law and mark a new benchmark in the official Australia's contempt for basic democratic rights. The Labor Party had previously opposed the 'Pacific Solution' and in the 2007 election campaign attempted to appeal to the widespread public hostility to the maltreatment of refugees.

The specific measures proposed by the Houston Panel, and quickly accepted by the Gillard Government, would go further than any of the policies enacted under the Howard Government. Whereas Mr. Howard had unlawfully excised several territorial islands in the waters between Australia and Indonesia from the country's migration zone, the Houston Report effectively demanded that all of Australia be deemed an excised zone. This is to ensure that refugees are likely to be deported overseas just as easily if they land on the mainland as if they land in the currently excised islands.

The Panel insisted that a necessary “disincentive” would only permit refugees, even once they are officially given such status, to come to Australia after being detained overseas for a period “comparable to what would have been made available had their claims been assessed through regional processing arrangements”, *i.e.*, as if they had they never made the journey to Australia and remained languishing in refugee camps in Africa or Asia.

Civil liberties and refugees lawyer Julian Burnside, Q.C. pointedly asked in relation to such a proposal: “How do you determine when a person would otherwise have been resettled ? Do you measure the average time in an African camp ? Do you look at the average time the same person would have spent in Malaysia or Indonesia ? That will throw up a different answer ... The average time for resettlement can range from 5 years to 40 years.”

The Howard Government’s ‘Pacific Solution’ had caused numerous mental health breakdowns, self-harm incidents, and suicides among traumatised refugees who were dumped in isolated and appalling conditions in Nauru and Papua New Guinea. Unlike what the Houston Panel had proposed, and Labor accepted, Mr. Howard never openly proposed arbitrarily to detain men, women and children after their refugee status had been approved, in order to deter others from joining them.

The Houston Report also recommended that after refugees are finally permitted to reside in Australia, those who initially arrived by boat should not be given the same opportunity as other refugees to bring their family to Australia, under the family reunion programme. This deliberate separation of parents from their children, men and women from their spouses, is another “disincentive” to what the Report deemed “irregular maritime arrivals”.

The central thrust of the Houston Report is to prevent refugees from being able to exercise even the limited rights identified by the Refugee Convention, to apply for asylum and not to be *refouled*, *i.e.*, returned to where they are at risk of political, ethnic or religious persecution. The various measures outlining discriminatory treatment of those who arrive in Australia by boat rather than another mode of transportation are in blatant violation of the Refugee Convention.

The entire political and media establishment has cynically attempted to exploit the genuinely felt sympathy among ordinary people for the victims of these incidents to justify an ever more draconian ‘border protection’ regime.



Prime Minister Gillard announced that Australia could be sending asylum seekers to Nauru and Papua New Guinea within a month. The Defence Force had informed her that it can construct temporary facilities in both locations while the main centres are being reopened.

“That means that within a month we would hope to see people being processed in Nauru and in Papua New Guinea.” she told reporters in Canberra. ... “That’s clearly subject to the work of the recon teams that could go as early as [the following] Friday.”

Ms. Gillard said she was counting on an expeditious vote on the legislation in the House of Representatives. “The time for politics is over, the time for action is here. It’s time to get this legislation amended. We want this legislation through.”

Ms. Gillard had met with the Defence Force chief General David Hurley to discuss logistics and spoken with the president of Nauru and the prime minister of Papua New Guinea by phone. “Both of them have been positive about hosting [processing] centres.” Ms. Gillard said. “Both of them have said if legislation passes this week they would welcome the reconnaissance teams from our Defence Force on [17 August]. They also had indicated they would work with the reconnaissance teams and with Defence to facilitate the establishment of temporary facilities.” She meant by that tents and other temporary structures.

Ms. Gillard said that the time for “politics, the political scoring, the yelling, the shouting” was over. “We need this legislation to pass the parliament so that we can get on with that action.” she said.

The Prime Minister could not confirm whether 44 Opposition M.P.s had been listed to speak on the Government’s legislation. “My understanding is the opposition has quite a large number of people who have put their names on the speaking list.” she said.

Ms. Gillard would not say whether she was comfortable with the prospect of asylum seekers being held offshore for up to 10 years. The Government would take careful advice from the United Nations refugee agency before determining any time frame, she said.

“It’s fundamental to the proposition in the Panel’s Report that you don’t get an advantage because you have got on a boat. ... Now there’s a need to implement that and work through what it means and what processing times are in our region for example.”

The Prime Minister said that she was still trying to contact her Malaysian counterpart, who was travelling. “I certainly will be speaking to him as soon as it is possible for us to do so.” she said. She would explain the recommendations of the Houston Report and ask for his agreement for officials to have further discussions about changes to the proposed ‘Malaysia Solution’. The Panel had supported it, but only with stronger human rights safeguards and the government has pledged to try to negotiate the extra protections.

On 15 August 2012 the Refugee Council of Australia accused the Government of displaying a stronger interest in the recommendations on deterrence than in the measures for the protection of refugees.

The Council deplored that political debate and the activity within the Parliament since the release of the Panel’s report had focussed almost exclusively on just three of the Panel’s 22 recommendations - those related to re-establishing forced transfers of asylum seekers to Manus Island and Nauru.

On that day the Council was one of 20 organisations, joined by former Prime Minister Malcolm Fraser and seven senior academics and lawyers, to write to the Prime Minister signifying their opposition to the legislation before the Parliament, which was aimed at re-establishing offshore processing of asylum claims. The letter raised serious concerns about the human rights implications of the legislation and the absence of any measure to enable regular Parliamentary scrutiny of transfer arrangements.

“The Refugee Council does not support the Expert Panel’s recommendations about the reestablishment of offshore processing but we note that the Panel saw these recommendations as part of a package of measures which included critical steps towards improving protection options for refugees within Asia.” Mr. Power, the Council C.E.O. said.

“We know that on [13 August] the Prime Minister and Immigration Minister committed to implementing all 22 recommendations but we have heard little or nothing since about any of the recommendations designed to provide refugees with constructive protection alternatives to travelling to Australia by boat.

The quality of the political debate from the Government and Opposition this week yet again leaves many Australians despairing about whether our political representatives have the interest or the capacity to deal with the complex nature of the regional challenges in refugee

protection. Australians - and the many people across Asia and beyond who are watching our national debate - need to hear more detail as soon as possible about Australia's plans to expand refugee resettlement and focus greater attention on regional cooperation and supporting refugee protection.”

The Council was pressing the Australian Government to give details of its strategies to implement the following measures recommended by the Panel:

- An immediate increase in the Refugee and Humanitarian Programme to 20,000 places and an increase to 27,000 places within five years.
- Increased funding for U.N.H.C.R. to improve processing systems for asylum seekers in Asia and the Middle East.
- Increased support for capacity-building and service delivery programs among N.G.O.s and civil society groups in the region.
- Focusing Australia's Refugee and Humanitarian Programme on asylum seeker flows moving from source countries into South East Asia.
- Regional engagement and cooperation with Indonesia and Malaysia.
- A whole-of-government strategy to engage with source countries for asylum seekers coming to Australia, with a focus on increased resettlement from the Middle East and Asia.
- Addressing the current backlog in the Special Humanitarian Programme.
- Creating more opportunities for resettlement by promoting coordinated strategies among traditional and emerging resettlement countries.

“If the Australian Government is serious about creating incentives for asylum seekers to seek protection through established regional systems, it needs to start this work now.” Mr Power said. “That means committing to targets and a timetable to build the Regional Cooperation Framework that stands the best chance of improving protections for refugees and asylum seekers in the region and ensuring they don't have to risk their lives at sea to find basic protection.”

The letter to the Prime Minister on offshore processing legislation read:

“The Hon Julia Gillard, Prime Minister  
August 15, 2012

Dear Prime Minister

We are united in our opposition to the Migration Legislation Amendment (Offshore Processing and Other Measures) Bill currently before Parliament. We are also concerned that other legislative changes required to implement the recommendations of the Expert Panel on Asylum Seekers will, if passed, see the Australian Parliament remove legislative safeguards for asylum seekers, reverse previous measures implemented to protect vulnerable people and breach Australia's international obligations. We oppose any form of offshore processing and policies centred on deterrence and punishing people based on their mode of arrival.

We are particularly concerned that implementation of the Expert Panel's recommendations will:

- Repeal the few human rights protections included in the offshore processing legislation passed in 2001.
- See any country designated for offshore processing, regardless of whether it is a party to the Refugee Convention.
- Punish asylum seekers who arrive by boat in breach of the Refugee Convention.
- Implement a return to assessing asylum applications in Nauru and Manus Island, ignoring past lessons regarding the mental health impacts of holding people indefinitely with limited freedom of movement.
- Facilitate the removal of child asylum seekers from Australia.
- Facilitate the transfer of unaccompanied minors who will have no guardian to act in their best interests, in breach of the Convention on the Rights of the Child.
- □Prevent IMAs (whatever their age) from proposing family members for the Special Humanitarian Program (SHP), creating greater incentive for families who want to stay together to travel by boat to Australia.
- Leave open the possibility that boats may be turned back in the future, contravening the Convention for the Safety of Life at Sea.

We welcome recommendations which increase our annual humanitarian intake and additional options for family reunion for refugee and humanitarian entrants. We also welcome the much greater focus on developing refugee protection options in South East Asia and a possible future review of the policy which links onshore and offshore visa places. However, these positive recommendations in the Expert Panel report must be legislated to ensure they are enshrined in law.

We are concerned also that, if neither House of Parliament uses the proposed disallowable instrument mechanism to vote down the transfer of asylum seekers to a particular country, the

transfer arrangement could remain in place in perpetuity. At the very least, transfers of asylum seekers out of Australia should be subject to regular review by Parliament. We ask the Parliament to specify in legislation that every disallowable instrument specifying a location as a place where asylum seekers may be transferred must include a six month sunset clause to enable regular Parliamentary scrutiny of transfer arrangements.

This consensus statement is signed by agencies and individuals who are directly concerned with and involved in the support of refugees and asylum seekers and academics with relevant expertise.

Yours faithfully

Amnesty International Australia  
 Asylum Seeker Resource Centre (ASRC)  
 Asylum Seekers Christmas Island  
 Asylum Seeker Welcome Centre (ASWC)  
 Bridge for Asylum Seekers Foundation (BASF)  
 Balmain for Refugees (BFR)  
 Brigidine Asylum Seekers Project  
 Sonia Caton, Migration Agent  
 CASE for Refugees  
 Centre for Human Rights Education, Curtin University  
 ChilOut  
 Coalition for Asylum Seekers Refugees and Detainees Inc (CARAD)  
 Darwin Asylum Seeker Support & Advocacy Network (DASSAN)  
 Rt. Hon Malcolm Fraser AC, CH  
 Sandra Gifford, Professor of Anthropology and Refugee Studies  
 Human Rights Law Centre (HRLC)  
 Hotham Mission Asylum Seeker Project (ASP)  
 International Detention Coalition  
 Ged Kearney, President, Australian Council of Trade Union (ACTU)  
 Melbourne Catholic Migrant & Refugee Office  
 Professor William Maley, AM FASSA  
 Dr. Anne Pedersen, Associate Professor  
 Refugee Council of Australia (RCOA)  
 Refugee and Immigration Legal Service (RAILS)  
 Uniting Church in Australia Assembly  
 Welcome to Australia  
 Dr. Savitri Taylor, Associate Professor and Director of Research  
 Tamara Wood, Nettheim Doctoral Teaching Fellow and PhD Candidate”

It is not know what the Prime Minister replied, if any. Ms. Gillard was too busy to shore up her political position, inside and out of Parliament.

The Prime Minister was more concerned with the implications and consequences of the Bill before the House of Representatives than with the protestations of the all sector of organisations, and most of the persons, involved in the refugee policy.

The Panel's Report is an astute document which allowed the leaders to terminate the Nauru-Malaysia deadlock. It gave cover for Prime Minister Gillard to retreat and accept Nauru without insisting on Malaysia as the required trade-off. It enabled Gillard to declare further compromise was essential and virtuous. "I am over it, we're all over it." Ms. Gillard said of the impasse. Nevertheless, it was clear that the Opposition Leader had gained a sonorous political victory. Mr. Abbott was not saying very much for the moment, except for pointing out that Labor's new bill was really his bill. He needed go no further than noting that Labor, for years dismissive of the 'Pacific Solution', was now hastening to call the President of Nauru and the Prime Minister of Papua New Guinea to revamp the initiative. And this is what the more than forty member of the Opposition who were listed for speaking on the Bill would be reminding Ms. Gillard and her Minister for Immigration. The Prime Minister was busy executing exactly the plan of the Opposition.

The Prime Minister was tainted by her reversal precisely because it was the issue over which, when in Opposition, she had declared Labor's moral superiority over Howard's policy.

During the 'debate' many Opposition members tormented the Prime Minister, reminding her that in 2002, in her capacity as the Opposition spokesperson on immigration she had on more than one occasion said that: "The so-called Pacific solution ... is nothing more than the world's most expensive detour sign. It does not stop you getting to Australia; it just puts you through a detour on the way while Australian taxpayers pay for it." And that she had gone on to say: "Labor will end the so-called Pacific solution, the processing and detaining of asylum seekers on Pacific islands, because it is costly, unsustainable and wrong as a matter of principle."

By the early afternoon of 15 August the urgent legislation promoted by the Government and reinstating offshore processing centres for asylum seekers had passed in the House of Representatives.

Only two members - the Independent Andrew Wilkie and Adam Bandt from the Australian Greens - had voted against the Bill.

There had been other voices, from both sides of the major parties, to speak in terms at time heartfelt about the Bill. But at the end, the stolid practice of the Westminster System and its iron-clad partisanship had demanded that both Labor and Conservatives would close ranks and vote as required by their respective leaders. Consequences, particularly for Labor members would have been draconian.

Labor M.P. Melissa Parke expressed her “deep sense of discomfort” about aspects of the policy.

Ms. Parke questioned the premise that asylum seekers coming to Australia by boat should not have any advantage over others who pursued orderly migration paths, “not least because this idea of an orderly path, or queue, is simply a myth.”

Under this principle, the detention time “could well be indefinite because for many asylum seekers, including those coming from places like Afghanistan and Sri Lanka, there are no queues to join and no orderly U.N.H.C.R. paths to safe haven.” she said.

Because of all the speeches in both houses of Parliament Ms. Parke’s appears to have been the one coming from a thoughtful person who was speaking both from a cultivated mind and a warm heart, it may be of value to quote that speech at some length.

Of the tone of the debate, and with the advantage of having heard many of her colleagues, Ms. Parke had this to say:

“The discussion has often been so full of distortion, misrepresentation, fear mongering, point-scoring and even righteousness that it cannot be called a debate. To the extent that we regard this outcome as a compromise it is still a compromise at the lower end of what we are capable of as a nation. We strive as a country for excellence in so many areas, and in so many areas we achieve that excellence. Here we have not excelled. Both the parliamentary process and the wider political process in which all of us, as parliamentarians and members of the media, share a part has not excelled. We have not excelled in presenting the facts to the Australian people, in crushing out the lies and easing the ill-founded fears, in lifting the miasma of misunderstanding and intolerance, and in arguing from principle towards reason and compassion.”

And further on:

“I would not be doing my duty on behalf of many of my constituents and fellow Labor Party members if I did not convey the deep sense of discomfort they and I feel regarding specific aspects of the path we are embarking on today as a parliament. 'Cruel to be kind' is a *cliché* that I am not sure is ever actually justified. In particular, there are strong concerns about the devastating consequences, including severe mental health issues, of detention of asylum seekers for indeterminate periods on Nauru and Manus Island. This was the proved experience under the Howard government's Pacific solution and the criteria have not yet been developed that would prevent such detention, in this case being appropriately described as arbitrary and potentially indefinite.

As my predecessor, Dr Carmen Lawrence, has written:

“Not surprisingly, every independent inquiry into immigration detention has drawn attention to the poor mental health of detainees and the particular risks to children's well-being.”

...

Such research has revealed high rates of post-traumatic stress disorder, depression, anxiety and panic attacks, attempted suicides and self harm. The longer people are held in detention, the worse the symptoms are likely to be, adding to the already high levels of psychopathology among those who've experienced persecution, harassment, torture and physical assaults.

Certainly, if the key criterion for the length of detention is the amount of time an asylum seeker would have had to wait if they had pursued UNHCR assessment within the region, then the wait could well be indefinite, because, for many asylum seekers, including those coming from places like Afghanistan and Sri Lanka, there are no queues to join and no orderly UNHCR paths to safe haven in this country or elsewhere.

I also question the premise that asylum seekers coming to Australia by boat should not have any advantage over others who pursue orderly migration paths, not least because this idea of an orderly path or queue is simply a myth. The only reason we have the sense in this country that asylum seekers who arrive by boat are taking the place of those resettled from refugee camps is that we have operated a quota system that throws these two distinct categories together. This creates an administrative fiction, and there is no reason that we could not have a category and quota for resettlement in addition to meeting our fundamental obligation to



assess the asylum claims of those who quite legitimately and legally seek humanitarian refuge in Australia.”

Coming to the end of her intervention, Ms. Parke remarked:

“The political discussion in recent years about stopping the boats and the people smugglers' business model has said very little about what it means to be a refugee. My own UN [where she was a lawyer between 1999 and 2007] experience tells me that people do not leave or stay away from their homes without very good reason. In this context I would like to recount the words of President Vaira Vike-Freiberga of Latvia, who fled her country as a child after the Second World War. She made the following comments at a 2001 meeting of parties to the refugee convention. She said:

*“No one leaves their home willingly or gladly. When people leave en masse the place of their birth, the place where they live it means there is something very deeply wrong with the circumstances in that country and we should never take lightly these flights of refugees fleeing across borders. They are a sign, they are a symptom, they are proof that something is very wrong somewhere on the international scene. When the moment comes to leave your home, it is a painful moment.*

...

*It can be a costly choice. Three weeks and three days after my family left the shores of Latvia, my little sister died. We buried her by the roadside, we were never able to return or put a flower on her grave.*

*And I like to think that I stand here today as a survivor who speaks for all those who died by the roadside, some buried by their families and others not and for all those millions across the world today who do not have a voice who cannot be heard but they are also human beings, they also suffer, they also have their hopes, their dreams and their aspirations. Most of all they dream of a normal life.*

...

*I entreat you ladies and gentlemen when you think about the problems of refugees, think of them not in the abstract think of them not in the bureaucratic language of decisions and*

*declarations, and priorities in a sense that you normally think of things. I entreat you think of the human beings who are touched by your decisions, think of the lives who wait on your help.”*

A Liberal backbencher, Ms. Judi Moylan, abstained saying that the legislation did not contain effective protections or any sort of timeline.

Earlier, the House had rejected an Opposition amendment which called on the Government to restore temporary protection visas and issue Defence with instructions to turn back asylum seeker boats where it was safe to do so.

And the whole House also rejected a Greens amendment which was designed to limit the Bill's measures to 12 months. “I would prefer that mandatory detention did not exist; I would prefer that we had a much speedier process for processing people's asylum claims,” Greens' deputy leader Adam Bandt told Parliament. “But I would hope that 12 months represents a reasonable time that all members of this House could agree to as being an acceptable limit... That is not perfect, but it is a compromise that I hope will be acceptable.” Any attempt in that direction was defeated.

*The Migration Legislation Amendment (Offshore Processing and Other Measures) Bill 2011* was ready to go to the Senate for consideration, where it was expected to pass by 16 August, just three days after Prime Minister Gillard had embraced the scheme.

Despite a barrage of support for the Labor Government's plan in the media, there are signs of political shock and revulsion at the Right-wing shift that has occurred. Letters to newspaper editors recalled that hostility to the Howard Government's policies had been a significant factor in Labor's victory at the 2007 election.

A letter to *The (Melbourne) Age* denounced “one of the most reprehensible decisions made by a Western government in the 21st century.” One to *The Sydney Morning Herald* commented: “The asylum seeker ‘solution’ being pushed by the Gillard government has got to be the final nail in its coffin for thinking voters... If we wanted the Pacific solution we would have voted for John Howard in 2007.”

Refugee groups warned of terrible consequences. Amnesty International's refugee spokesman, Dr. Graham Thom, said it was “shocking to see the panel favour punitive

measures that deliberately hold vulnerable people hostage, separate families and leave them in limbo... Ultimately, this will mean that more refugees in the Asia Pacific face torture, exploitation, and even death.”

Nor was the Government prepared to listen to the United Nations High Commissioner for Refugees who warned that asylum seekers must not be held on Manus Island or Nauru for so long that they suffer psychological damage.

The U.N.H.C.R.’s regional representative, Richard Towle, said the “legacy” of prolonged displacement on Pacific island states had been severe psychological damage.

“So we’ve got to make sure that if people who are genuine refugees are having to wait for solutions, it’s not so long as to cause damage.” he said.

Immigration Minister Chris Bowen had conceded that regular processes “can be a long time.” But he added that he had not yet had talks with the U.N.H.C.R. about the new policy.

Disquiet has intensified in union and Labor circles, too. Australian Council of Trade Unions president, Ged Kearney was among those who had signed the previously mentioned open letter to Prime Minister Gillard condemning the legislation. Ms. Kearney said that the A.C.T.U. opposed offshore processing. Australian unions had always advocated a humane approach to asylum seekers, she said. “We are talking about human beings who should not be treated as a political football.”

Senator Doug Cameron, a Left convener, said he had a “very heavy heart. I don’t like Manus Island, I don’t like Nauru, but we’re here because we couldn’t get an agreement on an approach that the U.N.H.C.R. said was O.K., and that was Malaysia.”

Three boats carrying a total of 200 people had been intercepted since 13 August, when the Labor Government had accepted in principle the recommendations of the Houston Panel Report. Australia had seen ‘unauthorised boat arrivals’ sky rocket in recent months. Up to mid-August 2012, more than 7,900 people have arrived in Australian waters. This compares to about 4,500 people for the whole of 2011.

The Prime Minister had intimated on 13 August that all boat arrivals were “at risk of being transferred to Manus Island or to Nauru”, where asylum seekers would initially live in tents.

She reiterated the message in an interview with *Sky News* on 15 August: “That is a very clear statement and a clear message to anybody who is contemplating paying a people smuggler and getting on a boat.” This was an indirect response to the Australian Greens’ challenge to commit to time limits for the detention of asylum seekers at the centres, that the Government wanted operational as soon as possible. Yet, she was still able to acknowledge that “These issues involving human beings both tear at your heart and challenge your thinking.” ... “Because we do have to extend compassion to people who are fleeing persecution but we don't want to create any incentive to risking your life at sea.”

The Opposition Leader, Mr. Abbott, said he had no problem with people living in tents. “People who arrive illegally by boat need to be treated humanely but they can't expect five-star treatment or even three-star treatment.” he quipped - as it is his excellent want. Liberal Party backbencher Dennis Jensen accused the government of being a “soft touch” for refugees. “Now, it’s time for the iron fist.” he said. The Opposition Leader also suggested that Prime Minister Gillard was responsible for the deaths which occurred at sea. Meanwhile, almost five years after John Howard was voted out of office, Australia was clamouring to reinstall some of the policies which made him so unpopular. Refugee advocates were furious. As the Asylum Seeker Resource Centre’s Pamela Curr said: “People will still drown... It’s just that we won’t see them drown.”

Only the Greens Leader Christine Milne said tent accommodation was inhumane. “On the one hand Angus Houston is saying people will be treated better this time and in the next breath we are going to be setting up these huge, temporary tent camps and we are taking away people's human rights.” she told reporters in Canberra.

In vain Independent Senator Nick Xenophon intimated that he wanted a “thorough” debate of the Bill when it reached the Senate.

\* \* \*

As the military was readying to begin preparing the processing centres, former Defence Force chief Chris Barrie complained that the use of defence personnel was a travesty. “The military shouldn’t have to do it.” he said, as a private contractor would be cheaper and more efficient.

Labor had re-opened one of the darkest chapters in Australia's history of refugee policies. In a final capitulation, Prime Minister Gillard had embraced the Howard Government's 'Pacific Solution', forcing laws through parliament with the support of the Coalition immediately to reopen offshore processing centres on Manus Island and Nauru.

Ms. Gillard had gained the despicable honour of implementing a policy which is crueller than Howard's. The legislation allows indefinite detention on Nauru and Manus Island - and Ms. Gillard was already talking about "four or five years" of punishment for asylum seekers, or in her words, detention long enough to "equalise treatment" with the wait for resettlement in Indonesia or Malaysia.

She said the detention centres could be up and running within a month and was even sending the Army to Nauru to begin restoring the camps. In a display of sheer mercilessness, Immigration Minister Chris Bowen declared that any asylum seeker who had arrived after 4.45 pm on Monday 13 of August, the day of the announcement, may be subject to the new arrangements.

The Government's fake humanitarian concern about lives at sea could not conceal that this is what Ms. Gillard had wanted all along: a ruthless measure to "stop the boats". The Prime Minister 'Expert Panel' consisted of border protection experts. It was no surprise that it recommended offshore processing.

Was the Government really intent on saving lives? Ms. Gillard had cast aside human rights concerns about the policy, which have been raised by a plethora of refugee and advocacy groups, saying, "what's harder is watching people drown." But it is the government's own "stop the boats" policies which have caused the drownings.

Australia's search-and-rescue efforts for asylum boats had been subordinated to a callous disregard for the lives of asylum seekers - telling boats to go back to Indonesia, where refugees face Australian-funded Indonesian prisons, or the scandalous 36 hours that Australian authorities spent sitting on their hands in June, knowing a boat was in distress. That delay cost 90 lives.

*The Sydney Morning Herald* revealed that a boat of 67 refugees, many of them Palestinian, has been lost at sea on late July. Australian authorities had done nothing in response to panicked calls from relatives for up to three weeks.

There is plenty that could be done to stop the boat tragedies if the Government abandoned its 'Fortress Australia' mentality. Yet the Houston Panel refused to consider proposals to decriminalise people smuggling. It should not be illegal to use such irregular travel networks to seek asylum - and should not be illegal to organise the boats either. Criminalising people smuggling, combined with Australian authorities sinking or burning the boats which make it to Australia, means unsafe vessels not fully prepared for the trip would be used.

One of the few positive Houston Panel's recommendations was to increase resettlement of asylum seekers directly from Indonesia and Malaysia, to give asylum seekers there a realistic alternative to getting on a boat. But the Government had ignored this, simply saying it supports increasing the refugee intake "in principle", saying that this would be it is too expensive, while at the same time preparing to spend \$1.4 billion for a detention camp on Nauru.

The Australian Government is reinforcing the myth that there is some kind of 'orderly queue' for refugees and that those who come by boat are 'queue jumpers' to justify their policy of deterrence. The fact is that refugee resettlement from camps overseas is more a ticket in a lottery than a place in a queue. Less than 1 per cent of the world's refugees are resettled in any one year. If they all joined a 'queue' the wait would be close to 135 years.

Just as under Howard, Gillard's cruelty will not stop refugees from attempting to reach safety in Australia. Deterrent policies can never work unless the Australian Government becomes more ruthless and brutal than the regimes refugees are fleeing.

But off-shore processing will make getting refugee status tortuously slow and inflict mental anguish and misery on some of the most vulnerable people in the world.

The last detainee on Manus Island, Aladdin Sisalem, had spoken out, explaining how the offshore detention centres are factories for mental illness: "When you see that a government watched by the world can do this to you, you can be gaoled for infinity, and no one can do anything about it, you are under a great injustice and [do not] even know how long you will

be in this gaol and what is going to happen to you after. ... One day, or two days, or even after two years, you end up having a breakdown or a trauma, post-traumatic stress and other psychological issues. You have to live with it for the rest of your life.”

A former U.N. Human Rights Commission Secretary, Dr. John Pace, had visited Nauru in 2001 for Amnesty International and reported: “Conditions are harsh, with the heat and the humidity in the upper thirties, and health conditions are basic.”

One ageing desalination plant provides the island’s only water. Refugee advocate Phil Glendenning, told the A.B.C. that when he visited Nauru in 2010, it, “was off between 9:00am and 5:00pm... [people] were unable to flush toilets in those hours.”

While the Bill was being discussed in the Senate, news arrived that the Papua New Guinea Government had announced that it would not take any asylum-seekers until Australia’s financial commitments were finalised.

The Papua New Guinea High Commissioner to Australia Charles Lepani said tha Prime Minister Gillard had acted prematurely by announcing Manus Island would host a processing centre, warning his nation did not want to be seen as “a little brother of Australia.”

Australia should look back to how former Prime Minister Malcolm Fraser handled asylum seekers with compassion, rather than revert to Howard-era policy, the Senate was told.

Fighting back tears, Australian Greens Senator Sarah Hanson-Young told the chamber the Government had cherry-picked recommendations from the Houston Panel. She said that the legislation did not increase Australia’s humanitarian refugee intake, as the panel recommended.

As Mr. Fraser watched on from the Senate gallery, Senator Hanson-Young urged Australia to learn from his leadership during the 1980s, handling Vietnamese and Chinese refugees. “This legislation will not save lives, it will kill people.” she said. “It will send brave courageous people insane.”

Senator Hanson-Young accused the Government of having lost its moral compass. “Many of these people cannot get to Australia by plane because we do not give them visas.” she said. “Our whole policy is designed to push people onto boats.”

Greens Senator Lee Rhiannon said that there had been the opportunity to come up with a solution which would have saved lives, respected refugee rights and honoured international obligations, if Labor had been willing to work with the Greens. Instead, it had chosen to work with the Coalition and return to the ‘Pacific Solution’.

“There are even aspects that make it worse than what we saw in those years.” Senator Rhiannon said, adding that an island prison would be established.

The Government and Opposition had teamed up to push the Bill through the Senate, despite Australian Greens efforts to delay its passage and make amendments.

The Greens denounced the major parties for failing to set time limits on detention, rejecting calls for a 12 month review and shirking on Australia’s international human rights obligations.

Greens Senator Hanson-Young claimed that there were ten unaccompanied children on Christmas Island at risk of being deported to Nauru and who won’t have any legal guardian protection under this legislation.

“Under Julia Gillard’s ‘Pacific Solution’ - which is what this legislation is - there are even less protections [than in Howard’s time].” she said.

Labor frontbencher Senator Kate Lundy said that granting unaccompanied minors special treatment would be the “height of irresponsibility” because people smugglers would send boatloads of children without their parents. Senator Lundy confirmed that there were ten unaccompanied minors among the new arrivals, who may be deported to Nauru.

For backbenchers in Labor’s Left faction, the legislation would leave a bitter taste. Labor Senator Gavin Marshall told the Senate that the Labor caucus was not unanimous in its decision to support the measures. “Many of us have great difficulty reconciling this decision with our personal values and I admit it conflicts with my own.” he told the Senate. “But as the party of government we do not have the luxury of indulging in our self-righteousness.”

He remained gravely concerned about the Bill’s punitive aspects and the effectiveness of the no-advantage principle as a disincentive.



The Opposition gleefully pointed out Labor's u-turn on the 'Pacific Solution'. Liberal frontbencher George Brandis said he had no doubt about the good intentions of former Immigration Minister Chris Evans when he announced proudly in 2008 that he would dismantle the Howard government's "inhumane" asylum seekers policy. "How often have we heard the road to hell is paved with good intentions?" Senator Brandis said.

After passing by the Senate on 16 August 2012 the legislation proceeded for royal assent.

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The passing of the Bill caused protests from overseas humanitarian organisations. Thus Human Rights Watch wrote from Washington, D.C. that "The Australian parliament's swift approval of an "offshore processing" law marks a shift in refugee policy that appears arbitrary and discriminatory on its face."

"Australia's new offshore processing law is a giant step backward in the treatment of refugees and asylum seekers." said Bill Frelick, refugee programme director. ... "Australia again seeks to shunt desperate boat people to remote camps, perhaps for years, to punish them for arriving uninvited by sea."

...

"The new law authorizes the government to transfer irregular migrants arriving by sea to the Pacific country of Nauru or to Manus Island, a remote malarial island that is part of Papua New Guinea. The legislation was rushed through the House and Senate just days after a government-appointed panel of experts issued a 22-point plan for addressing the issue of asylum seekers who arrive by boat.

While the legislation adopted the [Houston] panel's recommendation to reinstate offshore processing, it did not include most of the panel's other recommendations, many of which were geared toward improving the capacity of Australia, transit countries, and source countries to provide asylum seekers with safe alternatives to irregular boat departures. The House rejected an amendment that would have set a one-year limit on the time asylum seekers could be held at the offshore sites.

The legislation only targets asylum seekers who arrive irregularly by boat. The claims of asylum seekers who arrive by air, even with improper documents, will continue to be processed while they remain in Australia. In most cases they will continue to be given ‘bridging visas,’ which allow them to live and work in the community.

People escaping persecution often have good reasons not to ask the authorities for permission to travel before they flee,” Frelick said. “To set up a system that discriminates against asylum seekers just because they arrive irregularly by boat flies in the face of both basic fairness and fundamental refugee protection principles.”

Human Rights Watch then dealt with the failure of the ‘Malaysia Solution’ and its aftermath, and continued:

“But the government found common ground with the opposition this week when both agreed to enable offshore processing at Nauru and Manus Island by scrapping section 198A of the Migration Act, circumventing the High Court ruling.

The new law adds that “the designation of a country to be an offshore processing country need not be determined by reference to the international obligations or domestic law of that country.”

Refugee processing was closed at Manus Island in 2004 and at Nauru in 2008 after the so-called ‘Pacific Solution’ was criticized for being both costly and inhumane. Nauru Island became a party to the Refugee Convention in 2011, but has not yet demonstrated its capacity to provide effective asylum procedures and refugee protection, two additional criteria set forth by the High Court for compliance with section 198A. Papua New Guinea is also a party to the convention, but it has entered many reservations to it and also lacks a national refugee determination procedure.

Australia’s prime minister, Julia Gillard, said that asylum seekers could be sent to Nauru as early as September where they would initially live in tents, and could be expected to wait there as long as five years for their applications to be processed.

Gillard’s minister for immigration and citizenship, Chris Bowen, should not designate any countries for offshore processing, since the legislation, on its face, is discriminatory and is almost certain to result in arbitrary detention.”

“Parliament may have skirted the High Court’s ruling by cutting human rights protection from the Migration Act, but not the principle on which the ruling rested.” Frelick said. “Should this plan go forward, Australia will be shirking its obligations under the Refugee Convention by punishing asylum seekers based on their arrival and indefinitely detaining them offshore where their rights won’t be ensured.”

United Nations agencies, too, expressed their concern about Australia’s refugee policy. On 17 August U.N.H.C.R. and the United Nations Human Rights Office alerted that Australia’s plan to reopen detention centres on remote Pacific islands for asylum seekers and migrants who arrive by sea could violate their human rights and harm their mental health.

“We do not want to see a return to lengthy delays in remote island centers for asylum seekers and refugees before durable solutions are found. We are also concerned about the psychological impact for those individuals who would be affected.” Adrian Edwards of the U.N.H.C.R. told a news briefing in Geneva. Technically, the plan did not appear to violate the 1951 U.N. Refugee Convention, ratified by Australia. “But we have to look at how this is implemented.” he said. The plan was announced after a Report said 964 asylum seekers had died since 2001 while making the dangerous sea journey from their homelands to Australia.

“While applauding the goal to protect the lives of the migrants and asylum seekers who seek entry to Australia, we are concerned that a reopening of offshore detention centers could result in violations of human rights, including potentially indefinite detention.” U.N. Human Rights spokesman Xabier Celaya said in a statement. “The U.N. Human Rights office has long-standing concerns about Australia’s mandatory detention regime.” he said.

Immigration detention should be a “measure of last resort, only permissible for the shortest period of time and only when no less restrictive measure is available.” Celaya said.

Refugee policy is an emotive subject in Australia, even though the country receives only a small number of the world’s asylum seekers each year. the U.N.H.C.R. Office noted. The U.N.H.C.R. said that Australia received 11,500 asylum claims in 2011, down nine per cent from the year before, out of 441,000 lodged in ‘the West’ that year. “Asylum levels in Australia remain below those recorded by many other industrialized and non-industrialized countries.” the U.N.H.C.R. said in March 2012.

Encouraged by such solidarity, an Australian organisation returned to the subject.

The Human Rights Law Centre deplored the passage of the *Migration Legislation Amendment (Offshore Processing and Other Measures) Bill* 2011. The Bill, which was passed by the Senate on 16 August 2012, enshrined extensive and alarming violations of human rights in Australian law.

“The law, which authorises the transfer of asylum seekers who arrive by boat to offshore locations where they will remain indefinitely, even if they are assessed to be genuine refugees, violates Australia’s obligations under the Refugee Convention and the International Covenant on Civil and Political Rights. The law also strips away special protections for children in violation of our obligations under the Convention on the Rights of the Child. Parliament rejected proposed amendments to the Bill which would have limited offshore detention to one year and protected children’s rights.

This law entrenches the ‘deterrent’ strategies contained in the Expert Panel Report, while failing to enshrine any of the human rights protections recommended by the Panel. As a result, asylum seekers may be exposed to arbitrary detention, physical and mental health risks and the prospect of return to the dangerous territories from which they fled, all in violation of Australia’s international human rights obligations.” said Rachel Ball of the Human Rights Law Centre.

The Government has also failed to undertake a firm commitment to any of the ‘incentives’ to regular migration recommended by the Panel. “The Gillard Government is setting up a regime which does not offer the safeguards or investment in regional options for regular migration that were essential to the Expert Panel’s Report.” said Ms. Ball. “It’s a regime designed to punish a desperate and vulnerable population and does nothing to respond to the crisis that causes people to get on boats in the first place.”

The H.R.L.C. had written to the Parliamentary Joint Committee on Human Rights calling for an urgent inquiry into the Bill. According to Ms. Ball, “Even though the Bill has now passed, such an inquiry could play a constructive role in identifying human rights risks associated with the Act, and contribute to ensuring that such risks are monitored and mitigated.”

The H.R.L.C. had also joined with other nineteen leading refugee and human rights organisations in an [open letter to the Prime Minister](#) condemning the Bill.

And there was more. In the view of the Human Rights Law Centre, several of the Expert Panel on Asylum Seekers' recommendations violate Australia's international law obligations and, once adopted, would ravage Australia's claim to human rights compliance and good international citizenship, according to Ms. Ball.

"The Expert Panel promised to deliver an integrated policy package that adhered to Australia's international obligations. Regrettably, many of the recommendations fail this test and are incompatible with Australia's obligations under international human rights law." Ms. Ball said.

The Human Rights Law Centre welcomed recommendations to increase regional cooperation on refugee and asylum seeker issues. "Such recommendations are consistent with the Panel's brief of preventing asylum seekers from risking their lives at sea in a way that is compatible with our international obligations." Ms. Ball said.

The Human Rights Law Centre was very concerned that the Panel's recommendations do not reflect the substantial, evidence-based recommendations or advice made by over 50 human rights and refugee experts to the inquiry.

"Policies such as off-shore processing, the Malaysia solution, withdrawing family reunion rights and boat turn-backs are cruel responses to the desperation of asylum seekers who make the boat journey to Australia.

The human rights that are at risk under such arrangements include the obligation not to return a person to a territory where they would face a violation of their human rights; freedom from prolonged and arbitrary detention; the right to the highest attainable standard of physical and mental health and the rights of the child.

It is complete nonsense to maintain that such policies are for the benefit of asylum seekers who would come to Australia by boat. These policies are also unnecessary given that the greatest disincentive to making the boat journey to Australia - the risk of death at sea - already exists." Ms. Ball said.

On 17 August 2012 the Refugee Council of Australia declared that the new Australian legislation undermines global asylum system.

Parliament's passing of legislation to deter boat arrivals was acting against Australia's national interest and would undermine the international system of asylum.

The organisation's C.E.O. said that the amendments to the *Migration Act* 1958 would have a limited impact as a deterrent to asylum seekers considering boat journeys to Australia and would set back efforts to build better regional systems of refugee protection.

"Australia should be exercising leadership in promoting better standards of protection for refugees. Unfortunately, our leadership this week has been of the most negative kind." Mr. Power said.

"It's in Australia's national interest to encourage its neighbours in Asia to take the protection needs of refugees seriously. Instead, we are creating a situation in which constructive regional cooperation on refugee protection issues is less likely to occur.

We have seen this happen in Europe, which for over ten years has been trying unsuccessfully to build a common regional process for assessing asylum claims. This system still isn't up and running, in large part because many European countries have focused more on shifting responsibility for refugee protection elsewhere than on working cooperatively with their neighbours."

Mr. Power also said that the R.C.O.A. was deeply disappointed that the Senate did not support amendments by the Greens to introduce a regular system of Parliamentary scrutiny of the new arrangements. "If the Government is confident it is implementing the right policy, it's difficult to understand why it would be opposed having these new arrangements scrutinised by the Parliament."

Mr. Power said that the legislation had effectively stripped away hard-fought improvements to Australia's treatment of people seeking protection.

"The strong opposition expressed by the Labor Party and some Coalition MPs to the Pacific Solution has been wiped out. We realise that this legislation was developed in response to concerns about loss of life at sea but the Australian Parliament has taken the wrong approach.

Our Parliamentarians have not matched the concern they expressed for lives lost at sea with a similar level of concern for the tens of thousands of refugees and asylum seekers living in appalling situations throughout South East Asia. It is these appalling situations that force desperate asylum seekers and refugees to see no other option than to risk their lives on a boat to seek protection in a country like Australia.

Until Australia takes the refugee protection needs of refugees and asylum seekers in South East Asia seriously, this problem will not go away.”

Mr. Power said that the Refugee Council of Australia would be watching carefully to see whether the Government was serious about its commitment to implement all 22 of the recommendations of the Expert Panel.

“We have seen the punitive legislation proposed by the Expert Panel passed within three days of the report being handed down but the Government is yet to give any details of the recommended expansion of the Refugee and Humanitarian Program or the strategies aimed at improving refugee protection.” Mr. Power said.

“The Prime Minister has raised questions about the cost of additional refugee places but cost did not seem to be a factor at all in establishing offshore processing in Nauru and PNG. Our concern is that an all-too-familiar double standard may be applied – that positive measures are dismissed as unaffordable while there is no limit to the funds available for deterrence and detention.”

Australian Defence engineers sent to inspect the Papua New Guinea detention centre found it mainly run down and ‘unliveable’.

Royal Australian Air Force engineers arrived on Manus Island on 17 August to begin a survey of old buildings to assess whether they could be used again. The 40 buildings they looked at were dilapidated and overgrown by jungle. On a first look the facilities showed a destination which is far from habitable.

Run-down and termite-infested wooden houses of the old detention centre were surrounded by overgrown bushland. Over 30 demountable buildings are in very bad condition. Most are full of termites.

A major reconstruction operation would have to take place if a new facility is to hold refugees.

A spokesman for Immigration Minister Chris Bowen said the Government would have to wait for the engineers to report before deciding how many people could be housed at either centre.

On 17 August 2012 also a spokesperson for the Malaysian Government said that the government remained willing to work with the Australia Government in the interests of pushing forward with the agreement. "We believe that the agreement between Malaysia and Australia is the best way to tackle the menace of people traffickers, in a way that protects the interests of Australia, Malaysia and, above all, the immigrants involved." the spokesperson told the Australian Associated Press. "Recent tragedies have all too vividly demonstrated the disregard that human traffickers have for the rights of the individuals they target. ... "We hope that by pushing forward with the agreement and working with the Australian government, we can stop this trade in human misery."

The Malaysian Government was still willing to work with Australia to revive the asylum-seeker exchange agreement, saying that it remains the best option for combating people smuggling.

In the haste to revamp 'Pacific Solution', Prime Minister Gillard might not have reflected on the possibility that No. 2 could be overwhelmed before it can be put into action, with record numbers of asylum seekers continuing to arrive. Four asylum vessels were picked up in Australian waters on 16 August, the most to arrive in any one day since Labor took power in 2007. Another vessel was intercepted off Cocos Island on 17 August carrying about 30 people and more were expected to arrive.

Close to 500 asylum seekers arrived in Australia since the Prime Minister announced on 13 August that the Government would accept the Houston Report and reopen the two Howard Government-time Pacific detention camps.

A Government insider said that the rush of boats was partly a result of the people smugglers getting as many asylum seekers as they could out of Indonesia before the full impact of the



new immigration regime came into force. “They are moving all the stock out of the warehouse.” the source crudely said.

The Prime Minister had warned that any asylum seekers who arrived from the start of the week risked being sent to Manus Island or Nauru, but by some counts the likely capacity at those camps may already be a third full.

The combined capacity of the two camps on Nauru under the Howard Government was about 1,500 beds. Manus Island never held more than 500 people.

While the Coalition voted through laws allowing the re-opening of the two camps, it has been careful to warn that the boats will not stop arriving unless the full suite of Howard-time deterrents were implemented - including temporary protection visas and the turning back of boats to Indonesia by the Navy.

The performance offered by the Australian Parliament on the issue of asylum seekers and refugees after the delivery of the Houston Report will go down in history as one of the most infamous since the original invasion. And how would the resumption of offshore processing differ from early Australian history, when England decided to solve its ‘convict problem’ by sending them around the world to Botany bay - out of sight, out of mind ?

For the pretext of saving lives at sea became the socially acceptable way of saying: “We do not want you here.” This is the way Australia treats even its own ‘miscreants’ - however defined from time to time.

During ther Howard’s years the depiction of asylum seekers offered by the Government covered a range of undesirable characteristics and were deliberative provocative to an Australian domestic audience. The Labor Party joined in a dehumanising rhetoric on border control, the usual ‘national interest’, and the suggestion by irresponsible media shock-jocks that asylum seekers should be sent away - shot if necessary.

Despite all, Government and Opposition went on talking about protection, which is not provided for in the legislation, whereby - instead - thousands of people face years offshore and being denied their right to natural justice in detention centres. And why not call them for what they are: concentration camps ?

The legislation thrashes Australia's obligations under international law, conventions on the rights of the refugees, on the protection of children, and the very Universal Declaration of Human Rights which bears the imprint of a true Labour man.

The Government claims that the harshness of the legislation will save lives because its treatment of asylum seekers is so harsh that people will stop attempting to reach Australia.

"The same airplanes, navy ships that the Government will employ to take asylum seekers thousands of kilometres to Nauru could be used to bring asylum seekers safely from Indonesia to Australia. But the government is not really interested in saving lives." said Mr. Ian Rintoul of Refugee Council of Australia.

"Indefinite detention damages children, indefinite detention violates children's rights and indefinite detention kills people. This legislation will not save lives; this legislation will kill people. It will send brave, courageous and resilient people insane. We know it will because it did last time." Senator Sarah Hanson-Young warned the Senate.

The United Nations General Secretary Ban Ki-Moon has reminded Australia that its obligations to refugees are not optional.

The U.N. High Commissioner for Refugees Antonio Guterres said "Our preference is always that these situations are solved in Australia itself" - in other words that processing takes place in Australia. Guterres emphasised the requirement that "people ... have humane reception conditions, they will not have arbitrary detention, that they have access to education systems and employment. ..." ... "Detention is the area in which we would like improvements to be made in the sense that detention should be more an exception and less a rule and that of course detention conditions should be improved." he said.

The legislation goes further than arbitrary detention. Detention is mandatory and indefinite.

Nowhere does the Gillard Government acknowledge its legally binding international legal obligations, let alone the part it plays in contributing to what is a growing global humanitarian crisis. Whether it be Vietnam, Yugoslavia, Iraq, Afghanistan, Somalia, Sudan, Libya, Syria, Iran, each new war adds to the millions of desperate people fleeing for a safe haven.

“You invade our country, reduce it to rubble, cause sectarian divisions, and when some of us manage to escape and come to your country for shelter you turn us away or lock us up as though we are criminals.” Ahmed, a Middle-Eastern political refugee said.

The Australian Greens and Independent Andrew Wilke were the only members of Parliament to take a principled stand and vote against the legislation. From the ‘Liberals’ only Ms. Judi Moylan abstained. Even attempts by the Greens to amend the legislation to limit detention to 12 months and to provide some limited protections were ruthlessly rejected.

Not a single Labor parliamentarian had the courage to take a principled stand against the denial of the most basic of human rights to people fleeing persecution, torture and the threat of death - not one, not even those calling themselves ‘Left’. Several members of Parliament had “heavy hearts”, but opportunism stood in the way of their taking a stand to defend human rights and save lives.

The Australian Greens were adamant in their exposure of the Bill and the government’s lies surrounding its contents during the parliamentary debate. The Opposition blurred the issue by focusing on the Government’s change of heart.

“This is not a border security problem. This is a humanitarian crisis. It escapes me how anyone in this place could seek to implement any solution not underpinned by our lucky country’s moral framework and our obligations both written and implied as one of the original signatories to the United Nations Convention relating to the Status of Refugees.” Wilke told the House of Representatives. He reiterated his opposition to mandatory detention and offshore processing. He asked: “How can we as a nation and as a parliament accept an immigration detention regime which we know makes people mentally ill and for some to attempt suicide....?” ... “When people’s lives are at stake, I will not put my support behind legislation that takes us back to the time of the Howard-era Pacific solution with some modifications that make it even worse. The Australian public unambiguously rejected the Pacific solution at the 2007 federal election. How quickly we have forgotten.”

“People live in those processing facilities in limbo. They cannot work, they cannot go to school and they have no entitlement to health care. They are in absolute limbo and sometimes with no prospect of being resettled for 20 years.” Greens Senator Larissa Waters pointed out, referring to the conditions of people being held in Indonesia and Malaysia.

Greens Senator Penny Wright summed up the intention of the Bill: "... we are being asked to compromise so that we can treat some people so harshly that it will send a message of punishment and deterrence to others contemplating making the journey. We will have to treat them so harshly that it compares with the situations they are fleeing from..." When eventually freed, the plan is to send them anywhere but Australia.

Art. 14 (1) of the Universal Declaration of Human Rights states: "Everyone has the right to seek and to enjoy in other countries asylum from persecution." That includes in Australia.

The legislation will provide that the rules of natural justice do not apply. The minister, as Greens leader Christine Milne pointed out, "personally determines what is in the national interest, and he is then exempted from providing natural justice to a person seeking asylum." As previously stated, there is nothing in the Act about the interests of the asylum seeker, only what is in "the national interest" that the minister can arbitrarily determine.

Art. 16 of the Refugee Convention states: "A refugee shall have free access to the courts of law on the territory of all contracting states."

The Act does not provide for legally binding provisions covering the treatment of asylum seekers in other countries. Despite claims to the contrary by the government, the minister is not obliged to provide parliament with details of any verbal or written agreement - if one exists - with a country taking and incarcerating asylum seekers from Australia.

Senator Hanson-Young summed it up: "The whole point of this legislation is to have as little scrutiny as possible, as little regard to people's rights as possible, to write out of current legislation any legal obligation that we have under the UN convention and to put precisely in the legislation that none of these documents that the Houston report says are important and that the government and the minister here tonight continue to rabbit on about even have to exist."

The Act will not provide the protections recommended in the Houston Report. There are no obligations to provide access to basic services, for adequate accommodation, legal assistance or safety of those locked up indefinitely. The Government admits that the asylum seekers will initially - no one knows for how long - be housed in tents, behind barbed wire fencing, with drop pits (toilets) and bucket showers, and limited power on Nauru. Apart from

the primitive facilities and lack of services, people held on Manus Island face the additional risk of malaria.

The inmates could also be forcibly transferred to centres in Indonesia, Malaysia or elsewhere, to even more appalling conditions and no guarantee of basic human rights.

The Act will provide for mandatory detention of children, absolve the minister of previous responsibilities as guardian of unaccompanied children when in detention and provide no guarantees of their protection. It will also remove restrictions on the involuntary removal of unaccompanied children to detention centres in other countries, to which the High Court objected when planned for Malaysia.

“For all their lives all these children will know is poverty, desperation and in many situations cruelty. They will not be afforded basic human rights.” Greens Senator Rachel Siewert told the Senate. “[The Bill] will allow the transfer of child asylum seekers from Australia and the transfer of unaccompanied minors, who will not necessarily have a guardian to act in their best interests - in breach of the Convention on the Rights of the Child.” she said. “It will allow banishment to Nauru, or Manus Island or, essentially, anywhere but here.”

The Act abolished special family reunion provisions for refugees. This is cruel and totally unwarranted. The most likely outcome is that instead of one adult family member attempting the voyage, more families including children will risk their lives.

The adage goes “judge a country by its treatment of children.” Australia could not sink much lower.

“We can be doing things now to save people’s lives. Those who submitted to the Houston panel said it very clearly: increase the ability to assess people’s claims and give them an opportunity to apply for protection in Australia in the places where they are. We know they are in Malaysia and we know they are in Indonesia; commit to doing that there and bring them safely to Australia.” Senator Hanson-Young said. “If we were saving lives at sea we would be bringing these people safely to our shores.”

The Refugee Action Coalition said: “The only way to save lives at sea is to decriminalise people smuggling, to open Australian processing centres in the region, and massively to increase our humanitarian intake without making vulnerable boat arrivals pay for it.” Money

would be far better spent on humanitarian programmes than locking people up and destroying their lives.

The legislation will not stop people attempting to come to Australia by boat. As Senator Hanson-Young pointed out, it will not save lives. It is a callous, calculated, hard-hearted political manoeuvre to try to neutralise the effectiveness of the Opposition Leader's populist "stop the boats" line in next year's federal elections. It even removes some of the protections introduced by the Howard Government in 2001.

When the Rudd/Gillard Labor Government was elected in 2007, it promised to bring an end to the 'Pacific Solution' and abolish offshore processing of asylum seekers. Labor strongly opposed the inhumane system and turned policy around.

During the 'debate' the Coalition taunted Labor with earlier quotes from Gillard's damning the indefinite detention of refugees in the hell-holes of Nauru and Manus Island in Papua New Guinea.

One wonders how many of our political representatives know that Australia is not doing its fair share in helping asylum seekers. Australia is currently home to only 0.2 per cent of the world's refugees. Per capita Australia ranks 68<sup>th</sup> in the world.

Compared with other refugee-hosting countries, Australia receives a very small number of asylum applications. Per capita and with reference to the Gross Domestic Product Australia ranks 77<sup>th</sup>.

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The consequences of the 'new policy' were not long to appear.

Towards the end of August 2012, another boat, sailing from Indonesia and attempting to carry refugees to Australia, had sunk. Unconfirmed reports indicated that only 54 people had survived, after being stranded in the water for almost 24 hours before help arrived. It was thought that there were aboard 150 passengers from Afghanistan.

One of them had twice contacted the Australian Maritime Safety Authority - A.M.S.A. Rescue Coordination Centre early on 29 August at 4.20 a.m. and 5.05 a.m. Australian Eastern

Standard Time and reported that the vessel was in distress. A.M.S.A. said that the boat was 8 nautical miles south-west of Java. Later, it amended that report to the effect that the vessel would have drifted to a location about 50 nautical miles west of Java.

A.M.S.A. did not launch a search and rescue operation; instead it passed the information to its Indonesian counterpart, [\*Badan SAR Nasional\*](#) - *Basarnas*, Indonesia's national search and rescue organisation.

*Basarnas* received the report at 1.30 a.m., its time. However the organisation is not provided with night-time search equipment and delayed sending out a search helicopter and two boats until 7.15 a.m. A *Basarnas* spokesperson told *The Sydney Morning Herald* that: "The helicopters are not equipped with devices designed for night-time flying. And in order to dispatch boats we normally must get a permit [from the harbour] but the harbour office doesn't do it at night time."

Indonesian search and rescue vessels are also not equipped to operate far from the coast or in heavy weather between Indonesia and the Australian outpost of Christmas Island, that most refugee boats try to reach.

Indonesian authorities called off the search in the late afternoon, 12 hours after receiving the A.M.S.A. report. It was not until 9 p.m. A.E.S.T. that A.M.S.A. sent updated information to rescue authorities, better plotting the likely position of the stricken refugee boat by taking into account drift modelling.

The first six survivors were rescued by the Liberian container *APL Bahrain* at 3.30 a.m. A.E.S.T. on 30 August. Earlier the ship had spotted bodies in the water. Captain Manuel Nistorescu reported: "We were doing scheduled searching. At the last moment when I was thinking to abort, I heard some noises, and we spotted them in the water." The survivors reportedly used whistles and yelling to attract the ship.

According to the survivors, they were in the water after their ship's engine failed and the pumps became inoperable. Because the Australian Government seizes and destroys all intercepted refugee boats, some are poorly maintained or mechanically unsound, significantly increasing the danger for asylum seekers attempting to reach Australia.

A.M.S.A. and the Australian Border Protection Command dispatched two planes and the patrol ship H.M.A.S. *Maitland* on the morning of 30 August to assist the Indonesian authorities and three merchant vessels to conduct search operations. The *Maitland* arrived at 4 p.m., 33 hours after the ship was reported to have sunk, while the first plane arrived at midday. With four merchant vessels on site, 48 survivors were rescued on 30 August.

When journalists questioned Australian Home Affairs Minister Jason Clare about the poor initial response, he asserted: “Don’t underestimate how difficult this task is; don’t underestimate how big the sea that we’re searching is.” Yet the record demonstrates that accurate plotting was possible. The real issue was the Labor Government’s ‘new policy’, implemented by A.M.S.A., of denying responsibility for search and rescue operations that supposedly occur in Indonesian waters.

The tragedy also exposed the dangerous consequences of the Australian Government’s accusations, shared by the Opposition, that asylum seekers are resorting to ‘false alarms’ of distress in order to force the Australian authorities to rescue them and transport them to Christmas Island. The latest boat is the fourth known to have sunk en route to Christmas Island in recent years.

In order to reinforce the Labor Government’s determination to wash its hands of refugees in distress, and deter asylum seekers from exercising their right under international law to seek refuge from persecution, the rescued passengers were being forcibly taken back to Merak, in western Java, rather than to Christmas Island. Minister Clare told a media conference: “Given that this is so close to Indonesia it’s my expectation that the survivors will be taken to Indonesia.” They justifiably feared returning to Indonesia because they would not be under the protection of the Refugee Convention and they would have been regarded as illegal immigrants by the Indonesian authorities and, perhaps, even deported.

A *Basarnas* spokesperson told the Australian Broadcasting Corporation of an overnight plan to transfer the survivors from the H.M.A.S. *Maitland* to Indonesian authorities, so they could be shipped to Merak. In the past, survivors have been taken to Christmas Island, rather than Indonesia, which is not a signatory to the Refugee Convention, and detains and deports even recognised refugees.



At his media conference, Home Affairs Minister Clare reiterated the Labor Government's position of blaming 'people-smugglers' for endangering refugees' lives. He accused boat organisers of stepping up voyages in order to thwart the government's preparations to consign all asylum seekers to indefinite detention in camps on Nauru or Papua New Guinea's Manus Island. He claimed that "people-smugglers are running a closing-down sale... They're telling people: get on the boat before there's no more chance to come to Australia."

Prime Minister Julia Gillard's government has dispatched military teams to both Nauru and Manus, and is planning to send refugees there as quickly as possible, to live in tents until other temporary accommodation is erected. Immigration Minister Chris Bowen said that refugees would need to "see planes leaving for Nauru" in order to be deterred. The government has cynically justified its plan to detain refugees for years on Manus Island or Nauru by claiming that it will prevent drownings and save lives.

These responses only underscore the fact that the latest disaster is the product of Australia's 'border protection policy,' which forces refugees to attempt hazardous journeys in order to gain entry to Australia.

The tragedy at the end of August came just days after more evidence emerged that Australian authorities had delayed action to aid a refugee vessel in distress off Christmas Island in June 2012. *The Sydney Morning Herald* reported on 27 August that *Basarnas* documents showed that the Indonesian authority had requested help from A.M.S.A. to rescue survivors from the sinking boat on 20 June. This was eight hours after A.M.S.A. had received information on the vessel and transferred responsibility to the Indonesians, claiming it was in their jurisdiction. After *Basarnas* raised the alarm that it would be unable effectively to respond to the disaster, it took Australian authorities another 21 hours before they dispatched a rescue vessel. Some 90 people died in the sinking.

These events demonstrate that the Gillard Government's insistence on shifting responsibility for rescues to the Indonesian authorities is causing disasters. Further, the growing numbers of boat sinkings, like the deaths of 353 people aboard the SIEV X refugee boat in 2001, raise questions about whether the Australian Government is complicit in permitting tragedies to occur, as a means of deterring asylum seekers.

When the survivors reached the Indonesian port of Merak they realised that that was the point from which they had departed. Their consternation was understandable. Not only had they lost about \$ 5,000 each to be taken to Australia, they had been delivered by the *Maitland* to an Indonesian ship and taken back to Indonesia.

There were now 55 survivors; about 100 others had drowned. One of the survivors would die on the night.

One of the survivors spoke to a journalist of the Australian Broadcasting Corporation, and told of how they had been deceived. Once rescued by the *Maitland*, they had been told that they would be taken to Darwin for medical care. But then an Indonesian boat arrived and the survivors had been forced to get off the *Maitland* and get on that boat.

"First we thought it was sort of medical aid or something but as we approached this boat, we could see the sign and then we started requesting them not to send us on the boat... please keep us on the Australian boat and take us there."

Apart from that, the survivors complained that they had been denied medical treatment and food on the *Maitland*. "[The personnel on the *Maitland*] said, 'we are not allowed to because we don't have any medical system or doctor or anything'." he said.

"I haven't slept for seven days already and I haven't eaten for seven days already." another survivor said. "I haven't [had a] drink [since] yesterday when I arrived on the Australian boat - I got water from a rain can and that's all." He told the A.B.C. that the Australian vessel did not carry enough food to provide it to the asylum seekers.

"They didn't have enough for everybody. They had for their own selves." he said.

The survivor said: "Three days we were in the boat. After three days the boat broke... after four days of waiting, we were in the water, without boat, without lifejacket, without everything. ... We are in a tough situation. We didn't save medical things, we are all injured."

Indonesia's Human Rights Working Group, a N.G.O. Coalition for International Human Rights Advocacy, accused Australia of neglecting its responsibilities to protect people under the Refugee Convention. The organisation's coordinator, Mr. Rafendi Djamin, is particularly critical of the planned indefinite detention on Manus Island and Nauru. He

believes that asylum seekers will now have an avenue to file complaints against Australia for breaching human rights. “The Australian government should not be surprised if there is a case filed in the context of U.N. monitors for human rights.” he said.

His organisation is one of many international groups trying to move A.S.E.A.N, the Association of Southeast Asian Nations countries, like Indonesia, to start offering temporary protection for refugees. Australia wishes to maintain good relations with A.S.E.A.N.

As at 1 September 2012 the Department of Defence had not replied to an inquiry by the A.B.C. on the survivors’ allegations.

As Australians digest news of yet another asylum-seeker boat tragedy, the Gillard government increasingly would have been concerned that the message about its tougher border protection regime is not being heard in the region.

It was almost three weeks since Prime Minister Gillard publicly embraced 22 recommendations in the Houston Report aimed at stopping the flow of asylum seeker vessels to Australia.

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Despite the fracas surrounding the Houston Panel recommendations, in and out of the Australian Parliament, and the preparations necessary to send new boat arrivals to Nauru and Papua New Guinea’s Manus Island while offering a generous increase in the annual humanitarian intake, the boats had not stopped coming. Not only had they not stopped, they had not even slowed down. It is as if the new, much tougher declaration of the Gillard Government had fallen on deaf ears among people-smugglers and their customers.

By the end of August 1,864 asylum seekers had arrived on 32 boats, more than had come in July: also 32 boats and 1,798 persons. The Gillard Government had tried to brush these figures away, arguing that the boat arrivals in recent weeks were a last gasp as asylum-seekers rush for sanctuary before the Houston report can be implemented.

“I’ve been saying for about six months that people-smugglers are running a closing-down sale.” Home Affairs Minister Jason Clare said, referring to the sharp increase in boat arrivals.

“They’re telling people: get on the boat before there’s no more chance to come to Australia. That’s been happening for a number of months.”

The trouble with the closing-down sale analogy was that the shop actually ‘closed’ on 13 August, raising fears that the people-smugglers and their customers are not taking the Gillard Government's ‘new policy’. The Gillard Government may still be proven right; the message about Nauru and Manus as well as other tougher new measures such as the denial of family reunion for boat arrivals under the Special Humanitarian Programme may eventually reach across the region and deter boats. But as the boats kept arriving, any optimistic view seemed to be fading. The Government could not cling to its ‘last gasp’ view about the boats if there was no slowdown in the rate of their arrivals soon.

Asylum seekers who attempted to reach Australia in August, including those on the boat which sank off the Indonesian coast on 29 August with the loss of about 100 lives, presumably did so despite being aware of the ‘new policy’ on offshore processing.

The problem for the Gillard Government was to know whether its message was being heard loudly and clearly by those who are thinking of paying for a boat journey to Australia.

At the beginning of September, using YouTube, posters and other means, the Immigration Department launched an information campaign about the ‘new policy’. The publicity was carefully directed towards those refugee groups in Australia who might be tempted to help sponsor family or loved ones on a boat journey.

But the worry for the Australian Government was not so much that potential asylum seekers may be unaware of the ‘new policy’. Rather, the Government was fearing that they are aware of it but still do not consider it sufficiently tough to deter them from making a perilous voyage. The Opposition was faulting the Government for having adopted only one-third of the Howard Government’s policy: deportation to Manus Island and Nauru, and having failed to implement the other two parts: temporary protection visas and turning back the boats. The re-opening of the camps in the two Pacific islands was not enough, according to the Opposition.

On the other hand, the Government was concerned that if the rate of boat arrivals were to continue, the 600 places on Manus Island and the 1,500 places on Nauru would soon be

committed. This is, perhaps, the reason why the Government had been cautious as to when the 'new policy' of deportation to the islands would take effect. In the view of the Gillard Government, a threat to be sent there should be sufficient. Or at least so it hoped.

The situation was complicated by two additional difficulties: 1) the camps were not ready to receive the deportees, and 2) both Nauru and Papua New Guinea had indicated that they expected the asylum seekers to remain on the islands for as short a time as possible.

The latter difficulty was even more complicated, for two reasons: 1) it clashed with the recommendation of Houston Report that asylum seekers be kept on Manu Island and Nauru for the same length of time as they would have had they stayed in U.N. refugee centres in Asia, and thus remove any advantage of taking a boat; and 2) it contradicted the provision under the Memorandum of Understanding signed by Nauru with Australia which recognised "the need to ensure as far as possible that no benefit is gained through circumventing regular migration arrangements."

On 18 September 2012 the Nauruan Government ruled out accepting women and children asylum seekers until "modifications" were made to the tent city which had sprung up on their tiny island nation over the previous five weeks, echoing criticisms by the Salvation Army. While acting Nauruan President Kieren Keke noted the camp was still in its infancy, he supported comments by the Salvation Army - which is providing services for asylum seekers there - in saying more work was needed. "I think we would be getting comfortable [about accepting women and children] when some further modifications are made that would enable segregation between different populations," he said.

Dr. Keke's comments came hours after a spokesman for the church, Major Paul Moulds, questioned whether the Topside processing centre on Nauru, erected over the previous five weeks and capable of housing up to 500 asylum seekers, was ready for women and children. "We certainly would be keen to see more development happen with facilities prior to that happening," he said.

Home Affairs Minister Jason Clare told reporters in Canberra on 19 September 2012 that the Australian Government would continue to work "closely" with the Nauruan Government. "We made it clear that these are temporary facilities and we are building permanent facilities." Mr. Clare said.

On the same day a second group of asylum seekers - 36 single Tamil men - landed on the island after being flown overnight from Christmas Island, taking the asylum seeker population on Nauru to 86. That number was expected to rise to more than 150 before the end of September and will continue to grow as more asylum seekers are sent from the overpopulated Christmas Island camp.

Immigration Minister Chris Bowen announced the new arrivals on 18 September, and also revealed that four Australian Army C-130 Hercules carrying 25 Defence personnel, heavy moving equipment and other supplies were en route to the other revived Howard-time camp on Papua New Guinea's Manus Island.

Dr. Keke welcomed the Manus Island announcement, saying that the camp on Nauru was only one part of what was hoped would become a regional refugee system. He also confirmed that the Nauruan state would this time be responsible for processing refugee claims, rather than Australia. Under an agreement in principle with the Australian Government, Nauru will assess each asylum seeker and determine s/he meets U.N.H.C.R. standards for refugee status. Those found to be refugees will be granted asylum in Australia or another "nearby country." It is not yet known how participating nations will be determined. During the previous week the regional head of the U.N.H.C.R., Mr. Rick Towle, criticised the move, saying that Australia was handing over legal responsibility for people seeking asylum there. Dr. Keke said that the decision to assume responsibility for processing had not been taken lightly, but denied it was improper.

"[The asylum seekers] haven't as yet made application in Australia and a requirement of their stay in Nauru is to permit an assessment to be made."

Neither Dr. Keke nor Mr. Bowen would be drawn on the specifics of the new system. When asked whether asylum seekers would be able to appeal negative findings by the Nauruans through Australian courts, Mr. Bowen would only say he would be implementing a paragraph of the Houston which deals with appeals. All that paragraph notes is that a "merits review" be undertaken by "more senior officials and NGO representatives with specific expertise." The beginning of a 'regional arrangement' seemed fraught with some pretty basic misunderstandings.

Once back in the port of Merak, the survivors of 29 August were apprehended by the Indonesian police. Three badly injured were taken to a hospital. As one of the survivors who spoke good English like many others in the group told an Australian journalist, they were all ethnic *Hazaras*, easily distinguishable because of their ‘Asiatic’ appearance, persecuted in Afghanistan by the regime which is supported by the Australian Government and the army of which regime is being trained by Australian soldiers, and persecuted in Pakistan which does not tolerate the presence of minorities such as *Hazaras*. The first victims of those persecutions had been - of course, from the beginning of time - lawyers, doctors, teachers and intellectuals of various hues.

The survivor spoke of his fear that the Indonesians would disperse them to various detention centres around Java. A policeman confirmed that at least three in the group had already attempted the journey to Australia once before. Presumably, given the change, they would try again, regardless of the threat of imprisonment by the Australians.

The survivors said that they had risked everything to reach Christmas Island.

Whatever the costs and risks, and whatever the threats of deportation to Nauru or Papua New Guinea’s Manus Island emanating from Canberra, it is difficult not to foresee that at least one, if not all, will attempt the fatal crossing again.

At Christmas Island, meanwhile, detainees had been staging a desperate hunger strike after being told that they would be removed to Nauru, where they could languish for years, if not decades.

Speaking on the telephone with a journalist of *The (Melbourne) Age*, an elderly inmate informed that 238 people from Afghanistan, Iran, Pakistan and Sri Lanka, including 40 women and children, had been told that they would be sent to Nauru, “and if we refuse...we would be deported to our home countries. So we’ve been doing hunger strike.” ... “We don’t want to go [to Nauru] because we don’t want to be like others before us who went to Nauru but whose cases were not quickly handled and they have to stay there for six to eight years, so they became mad. They became mentally ill. We don’t want that.” he added.

In a letter to Australian newspapers, one of the inmates said: “Our hunger strike is on; our friends are saying that we will continue our hunger strike until we are informed that we are

not going to be transferred to Nauru or Manus Island. Three of our friends have been transferred to hospital because they faced kidney illness and most of the others are getting mental and other problems.”

The Australian Government confirmed that one person had been hospitalised, but refused to disclose the cause of the injury. As at 29 August up to nine people remained on hunger strike. The following day officials claimed that all had been seen eating again, but there was no independent confirmation.

The asylum seekers’ desperate act of protest is the inevitable outcome of the anti-refugee provisions trumpeted by Prime Minister Gillard in August: refugees who arrive after 13 August would be shipped to Manus Island or Nauru.

As a result, many more refugees will be forced into similarly drastic acts in the hope of gaining asylum. In time, more than 700 refugees have been informed that they would be sent to the islands. Among them are pregnant women, small children, torture victims and at least 12 unaccompanied minors.

The Labor Government responded with indifference to the hunger strike. Treasurer and Deputy Prime Minister Wayne Swan refused to comment directly on the events at Christmas Island, but said it was “very important to send a deterrence message to those who are contemplating getting on boats and risking their lives.” Foreign Minister Bob Carr declared that he did not expect a repeat of the desperate actions taken by refugees in Australia previously, including the sewing up of their lips in protest. “I would think there’s less chance of that because what we’re going through now is a very transparent process.” In other words, the brutalisation of the inmates would be an open process !

So the Australian Government did not mind forcibly removing some asylum seekers to Nauru towards the end of September. Two planeloads of Tamil asylum seekers from Sri Lanka had already been transported to live in military-style tents on the remote Pacific Island of Nauru. The 66 Tamil men were just the first of more than 2,000 refugees who will soon be detained indefinitely in primitive conditions on Nauru or Papua New Guinea’s Manus Island.

As the Tamil men were being transported to Nauru, Immigration Minister Chris Bowen and other senior Gillard ministers refused to put any time limit on how long the detainees would



be held on the island. That was in application of the 'no advantage' rule. Those asylum seekers could be housed in tents for months.

Under heavy security, the Sri Lankan men were loaded onto the flight from Christmas Island. Reportedly, police and security personnel outnumbered the refugees in order to prevent any resistance. Upon arrival at Nauru's airport, the men were removed one-by-one from the plane by Australian Federal Police officers and bussed to the facility, which is surrounded by jungle and is near the country's only rubbish tip.

Another planeload of Tamils was expected soon, within days, followed by the first group of Afghan *Hazaras* equally soon. By then, the camp would house more than 150 asylum seekers.

For the time being the refugees are sleeping in tents on army cots of metal and canvas without air conditioning, despite the tropical heat and humidity on the island. Reliable reports have it that large rats arrive at dusk.

At a Sydney press conference to announce the deportations, Immigration Minister Chris Bowen declared: "The message is very clear, if you arrive in Australia by boat you can be taken from Australia by airplane and processed in another country." He also emphasised that women and children would soon be deported to Nauru as well, declaring: "We are not going to provide loopholes for people to exploit."

How such measures could be an intimation to the so-called "people smugglers" to desist is beyond comprehension.

Despite previous promises by Mr. Bowen that Labor's system on Nauru would involve a 'processing centre', not a detention camp, the site's inhabitants are forbidden from leaving. The camp is then not a processing centre but a concentration camp. Mr. Bowen also announced that the Nauruan Government had accepted to assume the processing of the asylum seekers according Nauruan law, a clever manoeuvre designed to deprive the inmates of any recourse to Australian law.

It is hard to believe that such distorting measures could be applied in the name of 'humanitarianism.' The Australian Government has exploited the tragic deaths of hundreds of refugees on voyages to Australia to insist that the only way to "save lives" is to deter asylum

seekers from making the journey. In reality, it is the Government's increasing efforts to stop refugees, and its refusal to take responsibility for rescuing those whose boats founder after leaving Indonesia or Sri Lanka, which have driven asylum seekers to undertake ever-more hazardous journeys to get to Australian waters. The only way to prevent further deaths is to provide refugees with safe passage to Australia. Refugees currently have no choice but to attempt the trip in often-unseaworthy boats, precisely because the Australian Government blocks all official modes of arrival.

To give Labor's policy some pretence of international legitimacy, the Houston Panel urged that the U.N.H.C.R. and the International Organisation of Migration be involved in administering the centres on Nauru and Manus Island - as they were under the Howard Government. But both agencies refused to participate, underscoring the unlawful nature of the new measures. So it will be for the Nauruan Government to decide on refugee status, while the operation of the detention centres has been handed over to Transfield Services, a private Australian engineering firm, and the Salvation Army.

Since 13 August - the date when the 'new policy' was embraced - 3,200 asylum seekers have been intercepted on 52 boats attempting to reach Australia. During the period between 1 January and 1 October 2012, 167 boats carrying 10,912 asylum seekers and 246 crew have made the attempt - by far outstripping the capacity of the Manus Island and Nauru facilities. Far from stopping the arrival of boats - as the Government claimed - the 'new policy' has only highlighted the desperation of refugees to find protection, even if it means spending years in isolated detention.

In response, the Gillard Government is now seeking to revive its 'Malaysia Solution', despite the fact that Malaysia is not a signatory of the Refugee Convention and is notorious for the appalling conditions facing inmates. Labor's regime is paving the way for even more draconian measures. The Opposition, which has joined hands with the government on its 'Pacific Solution,' is now demanding that all Sri Lankan asylum seekers refugees be returned to their country of origin because the island's civil war is over, despite the systematic persecution of Tamils of certain persuasion or attributed association.

In fact, refugees are confronting a more draconian regime than that imposed by the Howard Government, which - it should be remembered - led to numerous instances of self-

harm, including attempted suicides, and the sewing together of lips. By condemning asylum seekers to indefinite detention, the Labor Government is ensuring that such acts will occur.

Details continued to emerge about the inhumane living conditions that refugees will face on Nauru. *The (Melbourne) Age* had visited the camp, which was being restored by Australian military personnel, and reported: “The asylum seekers will have only the most basic facilities when they arrive, including ...tents, an army cot made of canvas and steel poles and access to the local power grid, which experiences long outages several times a week. The site, called Topside and located across the road from a rock quarry and several hundred metres from the country’s only rubbish tip, is also one of the hottest sites on the island and is virtually windless. It is also home to large rats.”

Even Nauru was able to present some difficulties to the reception of certain detainees.

So, on 24 September 2012, “The position of the government of Nauru, which we’ve made known to the Australian Government, is that while it is still a tent city, that we perhaps restrict [arrivals] to the men until more comfortable accommodation is provided.” Dr. Vatucaawaqa said.

When asked if the medical situation at the camp was adequate, Dr. Vatucaawaqa said: “Given the situation, yes. And things can only get better.”

The Nauruan health authorities had received briefings from Australia about the medical conditions experienced by asylum seekers who stay on the island for “between three to six months.” he said. “One of our gaps here - that we are happy that our Australian counterparts are addressing - is mental health.” The effects of long indefinite detention on asylum seekers is a contentious issue in Australia. Some published medical research argues most people held longer than six months in immigration detention will suffer some form of mental health issue.

Ms. Gano Mwareow is Nauru’s nursing director who, during the Howard ‘Pacific Solution’, provided assistance to asylum seekers at the site. She could not recall anyone who stayed for less time under that regime. If the situation is repeated under Labor, serious mental health issues could be experienced. Nauru is clearly not in a position to assist regarding such health

concerns. The island has two psychiatric care nurses, and one is studying abroad. A psychiatrist visits the island four times a year.

Another issue which worries asylum seekers' advocates is the possibility that Immigration Minister Chris Bowen may send pregnant women or children to the island before proper facilities are built. "There is what some people would call a hard message, that you can't get an exemption by sending women and children." Mr. Bowen has previously said. "If I start issuing blanket exemptions ... the people smugglers will be out there using that."

Dr. Vatucawaqa said he did expect any pressure to be placed on the Nauruan health system by the arrival of pregnant asylum seekers, but did reveal that the hospital has one maternity ward - refurbished by AusAID [the Australian Government Overseas Aid Programme] in 2011 - with eight beds and two delivery bays.

Conditions on Nauru are so well known for being extremely bad that a group of Sri Lankan men preferred to return to their home country, if the Government should be believed. The Australian Government triumphantly announced that a group of Sri Lankan men were being returned to their home country after opting not to be processed as asylum seekers on Nauru. The group of 18 asylum seekers - 16 of whom arrived in Australia after Labor announced its 'new policy' - had been waiting to be processed on Christmas Island.

Immigration Minister Chris Bowen said that the men asked not to be transferred to Nauru for processing and did not want further to pursue a claim for asylum.

The men boarded a charter flight to Sri Lanka on 22 September 2012. Mr. Bowen said that the transfer was a "significant step" which showed that the Government's 'new policy' on asylum seekers was working. "These people had been misled by people smugglers to believe that a visa would be available on their arrival in Australia." he said. ... "I think what this transfer does, together with our transfers to Nauru over the last week, is [to] show that if you come to Australia by boat you risk your life and throw your money away." ... "I think that [people smugglers] will continue to mislead people." he added. ... "But we will continue to communicate in the region, in source countries and tell people that if you come to Australia by boat you risk your life and you throw your money away." Mr. Bowen also hit back at criticism of the mental health care that will be available to asylum seekers on Manus Island and Nauru.

The Australian Government released part of its contract with the International Health and Medical Services, an organisation which manages health systems on behalf of governments and international organisations, the health provider at the camps. The intention was to show the staffing levels at the offshore processing centres. Each offshore processing centre will have a handful of psychologists and mental health nurses, but no full-time psychiatrist, Mr. Bowen acknowledged.

The Greens said that that is completely inadequate, but Mr. Bowen retorted that it is “broadly consistent” with what would be available in Australia. And he went on: “The Greens are wrong and they don’t understand the counselling services that are available.” he told a press conference on 22 September. ... “There will be psychological support available on Nauru as is outlined in the contract with I.H.M.S. ... The I.H.M.S. contract makes it clear that the counselling services that are available on Nauru consist at a minimum of two counsellors and two medically trained professionals regardless of the numbers on Nauru at any particular time.

“I think that the Greens are just making political points. I mean the Greens are continually complaining and continually criticising, we’re actually getting on and implementing the policy in a way that recognises the challenges but does so in a way that assists people in what is a very difficult process.” Mr. Bowen might have paid no attention to what Dr. Vatucaawaqa had said.

Anyway, Greens Senator Hanson-Young had earlier called for an increase in the level of mental health services in the processing centres. “There are only two counsellors under this contract for refugees in Nauru.” she said.

“At peak capacity, when there are 1,500 people in that facility, there’ll only be two counsellors. ... No permanent psychiatrist. Those numbers, of course, need to be increased.”

The Senate had called on the Government to release its contracts with offshore processing services providers I.H.M.S., Transfield Services and the Salvation Army. However, the Government only released the contract with I.H.M.S., and that contract’s value remains confidential.

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As the pretence of saving refugee lives becomes increasingly threadbare, the logic of Labor's policy is clear: it is to take ever harsher measures to deter refugees from asserting their fundamental legal and democratic rights to seek asylum. The Gillard Government has cynically attempted to justify its harsh, punitive regime as a measure to save lives - by deterring refugees from risking drowning in attempts to reach Australia by boat. The only way of preventing such tragedies is to end the system of 'border protection' and, instead, to acknowledge the fundamental right guaranteed to asylum seekers by Art. 14 of the Universal Declaration of Human Rights: "the right to seek and to enjoy in other countries asylum from persecution."

That basic document was promoted by an illustrious Australian and a real Labour man, Dr. Herbert Vere Evatt, who was President of the General Assembly on 10 December 1948 on the day of adoption.

But the 'average Australian', secure in her/his fortress, fattened by his 'culinary multiculturalism', self-satisfied, wilfully ignorant, thoroughly indifferent to every matter of the spirit, impervious to real liberty, equality and fraternity, is likely to ask: Dr. Who? S/he has the government S/he deserves.

Make no bones about it. Australia's treatment of asylum seekers is born out of ignorance, bigotry, xenophobia and racism.

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