



**The Australian Greens
Submission to the Expert Panel on Asylum Seekers**

THE THIRD OPTION: SAVING LIVES NOW AND A NEW REGIONAL PLAN OF ACTION

The Australian Greens welcome the opportunity to provide a submission to the Expert Panel on Asylum Seekers led by Air Chief Marshal Angus Houston AC AFC (Ret'd).

Senator Christine Milne, Leader of the Australian Greens, and Senator Sarah Hanson-Young, spokesperson for Immigration and Citizenship, are pleased to be participating in the parliamentary Multi-Party Reference Group that will engage with the deliberations of the Expert Panel.

SAVE LIVES BY PROVIDING SAFER PATHWAYS

The Australian Greens' submission identifies immediate actions that would save the lives of people who are seeking Australia's protection by providing them with safer pathways. These are:

- 1. Increase Australia's humanitarian intake to 25,000 per year and as part of that increase urgently resettle at least 1,000 people from Indonesia and at least 4,000 people from Malaysia;**
- 2. Immediately increase funding to the United Nations High Commission for Refugees in Indonesia, or a specially deployed Australian assessment team, to boost the capacity to assess asylum applications in Indonesia;**
- 3. Immediately escalate discussions with the Indonesian Government around preventing boat departures from Indonesian territory and enhancing their search and rescue capacity, and codify and abide by our obligations to provide safety of life at sea;**
- 4. Immediately escalate multilateral discussions in aid of establishing a New Regional Plan of Action that is fair, safe and legal;**
- 5. De-link the onshore and offshore quotas for humanitarian visas;**
- 6. Address the lack of humanitarian family reunion pathways by immediately and significantly boosting the numbers of family reunion places within the Humanitarian Program;**
- 7. Review carrier sanctions and visa impediments for people seeking protection by air; and**
- 8. Establish an Australian Ambassador for Refugee Protection to assist the government with high-level advocacy in the region.**

The Greens are committed to the overriding and urgent objective of this Panel process, which is to canvass ways of preventing asylum seekers from risking their lives by travelling to Australia by boat, as well as the longer term objective of establishing an effective and sustainable approach to asylum seekers within our region.



The people who are drowning at sea are fleeing persecution. Our challenge is to have the courage to do the right thing by offering hope and sanctuary in Australia so refugees do not have to risk their lives for the chance of finding safety, certainty and livelihoods.

The arrival of asylum seekers to Australia is fundamentally an international issue that requires an international response. It is also an humanitarian issue; not an issue of border control or national security. The people who would be subject to these recommendations are fleeing tragedy, terror, persecution, displacement, rape, conflict and death, and they possess the right to seek protection.

It is important that any proposals recommended by the Panel are legal recommendations that are consistent with the *1951 Convention Relating to the Status of Refugees* and the *Related 1967 Protocol* (Refugee Convention). The Greens emphasize that any proposal for off-shore processing used as a deterrent is not compatible with that basic proposition. Helping the victims of persecution is more than an idealized, ephemeral and caring response – providing sanctuary in Australia is our duty. It is why Australia signed the Refugee Convention.

Australia's experience of irregular migration is a small part of a complex global phenomenon. The Greens believe the arrival of asylum seekers to Australia is not, and has never been, a domestic policy issue that can be effectively or sustainably addressed without simultaneous and genuine investment in a long-term regional response.

Policy approaches over the last two decades such as temporary protection visas, the 'Pacific Solution', off-shore processing in Nauru, and turning boats back did not save lives at sea nor deter people from seeking Australia's protection. Deterrence will never be the basis for an effective and sustainable asylum policy. The only way Australia could truly deter asylum seekers seeking our help would be to become as cruel and threatening as the persecutors, such as the Taliban, whom people are fleeing in the first place.

Last month federal parliament was asked to choose between two unsustainable, inhumane and ineffective proposals – offshore processing in either Malaysia or Nauru – neither of which would save lives, uphold Australia's international obligations nor give rise to a genuine long-term regional response.

The Greens are putting forward a third option. Our two-pronged approach is comprised of short and longer term regional actions, by saving lives immediately through escalated resettlement from Malaysia and Indonesia, while working consistently towards the establishment of a New Regional Plan of Action; and maintaining onshore claims assessment for people who do come to Australia consistent with our international obligations.

THE REFUGEE CONVENTION – BEDROCK FOR A HUMANE AND LEGAL RESPONSE

Australia is under obligations to respect the principle of non-refoulement as a signatory to the Refugee Convention, which means we must protect refugees by not sending them to places where they are at risk of being exposed to a violation of their human rights, or to countries from where the person would be at risk of being returned to another country where they may be exposed to a serious human rights violation.

Having signed up to a range of international instruments such as the Refugee Convention and other human rights treaties Australia is also under international obligations to act in good faith towards



asylum seekers and refugees. We cannot claim to be acting in good faith towards people seeking our protection by punishing them, simply because they arrived by boat, while failing to even attempt to provide safer, expedient and durable pathways. For this reason the Greens continue to urge the Expert Panel, the Reference Group and the federal parliament to seek a range of responses that are all underpinned by our Refugee Convention obligations.

Not to do so would undermine the ability to encourage a regional response as other countries would have a disincentive to participate as they watch Australia abandon international and refugee commitments.

GREENS' IMMEDIATE PROPOSALS TO PROVIDE SAFER PATHWAYS AND SAVE LIVES

These proposals would bring about an immediate reduction in boat departures from Indonesia. These proposals have not been comprehensively attempted by Australian governments in the past two decades, since the introduction of the failed deterrence policy of mandatory detention in the early 1990s.

These proposals are consistent with the advice of peak refugee advocacy groups, human rights groups and international legal experts.

1. Increase Australia's humanitarian refugee intake to 25,000 per year and as part of that increase, urgently resettle at least 1,000 people from Indonesia and at least 4,000 people from Malaysia;

- Australia's humanitarian intake has not been increased from 13,750 since 2009/2010. According to the UNHCR, global asylum claims jumped 20% in the last year alone. We have the capacity to take more of these desperate people who, in their gratefulness for protection, have proven to be culturally enriching and productive members of Australian society. At 13,750 our humanitarian quota is a mere 7% of our 2012-2013 migration program as opposed to under the Keating and Howard governments when humanitarian visas made up 18% of the total migration program. Australia's resettlement peaked in 1980/1981 at 22,000 people per year which equates to 34,000 resettlement places today. There is no sound policy reason for not lifting our humanitarian quota, but, as a life saving measure, every good reason to do so.
- There are currently approximately 1219 people who have been assessed as refugees waiting in Indonesia for resettlement. Yet from July 2011 to February 2012, Australia had only resettled 62 people per year from Indonesia. A survey of resettlement over the past decade shows that on average Australia has settled less than 60 refugees from Indonesia per year. Similarly there is very little movement out of Malaysia for refugees. In 2011, there were 85,000 UNHCR recognized refugees in Malaysia but in that year only 8400 were resettled in third countries. Given the decades long wait due to the discrepancy between high demand and resettlement rates, and the severe limitations on social supports for refugees in Indonesia and Malaysia, people are desperate to reach Australia where they can access safety, security, education and health services. In Malaysia, there is the additional imperative to move on towards Australia due to the lack of safety for asylum seekers and refugees, who have no legal status or protection, no capacity for livelihood and are subject to corporeal criminal punishments and other dangers.



- The International Organization for Migration (IOM) directly advised the Greens that boat departures have immediately reduced when there is a prospect of increased direct resettlement. This substantiates the pleas made, in person, by refugees and asylum seekers to Senator Hanson-Young during her visits to Indonesia and to Australian immigration detention centres.
- 2. Immediately increase funding to the United Nations High Commission for Refugees, or specially deployed Australian assessment team, to boost the capacity to assess asylum applications in Indonesia;**
- There are 4766 people who have registered as asylum seekers in Indonesia, most of whom are waiting for their claims to be assessed. At the rate of assessments and resettlement currently being achieved out of Indonesia, the delay in assisting people to find safety is years long. If given hope through clear information and an indication that their claim will be processed in a reasonable timeframe, leading to resettlement in Australia or another resettlement nation, the incentive for people take a chance on a dangerous boat to Australia will be significantly reduced.
 - Funding needs to be provided to the UNHCR and to relevant agencies to significantly enhance the ability of assessments to occur in a reasonable timeframe in countries like Indonesia, Malaysia and Thailand. The funding boost for enhanced assessment and resettlement should be tied to improving human rights and protections in countries of transit and should be monitored for cost-effectiveness.
- 3. Immediately escalate discussions with the Indonesian Government around preventing boat departures from Indonesian territory and enhancing their search and rescue capacity; and codify and abide by our obligations to provide safety of life at sea;**
- The Indonesian search and rescue zone extends to 12 nautical miles from Christmas Island. Although under international law it is technically Indonesia's responsibility to conduct search and rescue in these waters, BASARNAS (the Indonesian search and rescue agency) has admitted it does not have the capacity for the full range of search and rescue operations outside their territorial waters particularly in bigger swells.
 - Australia has international obligations to assist boats in distress as a signatory to the *International Convention for the Safety of Life at Sea (SOLAS)* and the *International Convention on Maritime Search and Rescue (SAR)*. Australia has implemented some of these obligations through domestic law primarily through the *Navigation Act 1912*.
 - In November 2012 the UNHCR convened a meeting to consider how best to respond to asylum seekers and refugees in distress at sea. Some of the challenges raised were: a lack of capacity and/or willingness of coastal states to fully implement their obligations under the SAR and SOLAS conventions; difficulties in Masters finding coastal states willing to provide a place for safety for disembarkation; restrictive definitions of what constitutes 'distress at sea' resulting in a lack of timely assistance' and tension among states and delays due to different views on SAR and SOLAS obligations.
 - Given that Australian agencies are routinely required to assist with search and rescue in the zone between Indonesia and Christmas Island, there is an urgent need for clarification and



consistency of practice to be established between the Australian Maritime Safety Authority and the Border Protection Control (Customs) in relation to asylum seeker boats in distress.

- The Senate Inquiry into a Certain Maritime Incident recommended that operational orders should refer to international safety at sea obligations explicitly in writing and accord them priority under international and domestic law. This requirement should apply equally to the Australian Maritime Safety Authority and the Border Protection Control so as to ensure explicit and consistent codification of Australia's SOLAS obligations and operational practice prioritizing the safety at sea of refugees and asylum seekers.

4. Immediately escalate multilateral discussions in aid of establishing a New Regional Plan of Action that is fair, safe and legal (see details outlined in next section)

- This is not the first time Australia and our neighbors in the Asia-Pacific have faced a regional crisis of irregular movement of asylum seekers and refugees, including tragic loss of life at sea. Under the Fraser government Australia entered into a carefully managed and transparently structured regional arrangement which served to save many lives. Many people who are now proud and productive members of Australian society were resettled to Australia under the 1989-1996 Comprehensive Plan of Action for Indo-Chinese Refugees (CPA).
- Re-establishing an enduring regional response is critical because we can point to the CPA as the only proven model for addressing asylum, resettlement and repatriation needs and while doing so, promoting regional cooperation in response to a humanitarian situation.
- Australia took up the Chair of the UNHCR Working Group on Resettlement in July 2011. Australia is in a position to demonstrate leadership and good faith by taking high numbers of refugees through targeted resettlement. The Greens want to support a process that is committed, as under former Prime Minister Fraser, to preserving first asylum, to reducing clandestine departures and promoting legal migration, and to enhancing resettlement of refugees in one of the world's 25 resettlement countries, including Australia.
- A New Regional Plan of Action should be based on the shared goal of establishing common standards so that asylum seekers are treated humanely throughout the Asia-Pacific region, have their asylum applications processed fairly, and if found to be a refugee, are provided with permanent protection in a safe country. The elements of a successful regional response should include:
 - Effective screening systems
 - Protection sensitive reception arrangements
 - Durable solutions for resettlement, alternative migration pathways and repatriation
 - Targeted development assistance.
- However, where a person does reach Australia and seek our protection, the Greens strongly believe that, consistent with our obligations under the Refugee Convention, we should assess their application for protection as part of our on-shore assessment program regardless of whether they arrived by sea or by air.



5. De-link the onshore and offshore quotas for humanitarian visas

- As the UNHCR says, Australia is the only signatory to the Refugee Convention with a policy of reducing the offshore component of our refugee intake every time a person who arrives by boat and applies in Australia is found to be a refugee. The decision to link these policies was made by Howard government in order to create the false impression of a 'queue', and it has been left in place by the current government without sound policy basis. For years, peak refugee advocacy groups in Australia have been urging the government to de-link these visa programs. The UNHCR's position has always been to call for the government to discontinue the linkage and to explore parallel immigration pathways for eligible family members. The UNHCR considers this to be a key element in life saving reforms of the humanitarian program.
- The current government's policy misunderstands the inherently disorderly process of fleeing persecution and seeking protection. While we should strive to manage the flows of refugees in our region as best we can, we should acknowledge that not all arrivals are equally able to access official channels for applying for asylum.

6. Address the lack of humanitarian family reunion pathways by immediately and significantly boosting the numbers of family reunion places within the Humanitarian Program;

- Families are often separated in the disorderly process of displacement and resettlement. Under current Australian migration policy, families can seek to reunite in various ways including through the Special Humanitarian Program (SHP) or the Refugee Program. Currently the demand for these visas far exceeds the number of places allocated.
- The lack of places available for families to reunite is exacerbated by the numerical link between the onshore component of the humanitarian program and the SHP. As discussed above, Australia is the only country in the world that has created a numerical link between its offshore resettlement of refugees and humanitarian entrants and its recognition of asylum seekers within its border. Each time an asylum seeker is recognised by Australia as a refugee through its onshore protection process, one position is deducted from the SHP which has a direct impact on family reunions.
- The Department of Immigration advises that there are currently 20,500 applications for family reunion in the humanitarian stream, and that this year Australia will accept 750 places. This means there is currently a 27 year wait for the acceptance and resettlement of family members of refugees in Australia. We know that some of the people who perish at sea are desperately seeking to rejoin their families in a more humane and reasonable timeframe.
- The 27 year wait is leading to a repeat of the outcomes caused by Temporary Protection Visas, where family members are taking the option of a risky boat because there is no realistic hope of reunion. An immediate boost to allocated places for family reunions broadly, including under the SHP, would provide people with safer options for being with their loved ones. This is what is being called for by the peak refugee agency the UNHCR.

7. Review carrier sanctions and visa impediments for people seeking protection by air;

- The Greens see value in reviewing Australia's universal visa requirements and commercial airline carrier sanctions, with a view to identifying possible reforms that could assist people to



seek protection in Australia by the safer means of air travel, rather than by dangerous sea voyage.

- Concerns about potential increase in air arrivals for asylum seekers can be mitigated by considering the broader context of Australia's small share of onshore asylum applications. UNHCR figures show that Australia directly received (by air and boat arrival) 11,510 of the 876,100 new applications for asylum that were made to governments or UNHCR in 2011, which is only 1.3% of the total worldwide figure.

A NEW REGIONAL PLAN OF ACTION:

The below points outline how a regional response could work through coordinated and multilateral efforts by Australia, and our Asia-Pacific neighbors, to establish a long-term humane system for asylum seekers.

The Greens propose a *New Regional Plan of Action* based on a reformulation of what was achieved in the past to assist the waves of Indo-Chinese refugees who were at risk in our region.

We propose that the New Regional Plan of Action should be underpinned by:

- A central emphasis on human rights for refugees and asylum seekers in line with international law and our Refugee Convention obligations;
- Safety within, and safe pathways from, transit countries so that desperate people no longer believe that their only option is to board a risky boat;
- Consistent standards of reception, assessment and protection across the region;
- Fair and consistent refugee assessments in each country, including independent monitoring and judicial review of decisions;
- Assessments within a reasonable timeframe by the UNHCR.

Australia could:

- Take a prominent role in forging a multilateral agreement to make the regional response a success;
- Increase Australia's humanitarian intake to show good faith and leadership in our region;
- Resettle significantly more refugees from Indonesia and Malaysia (as discussed above);
- Establish incentives for better intelligence and cooperation to stop people boarding boats in the first place - e.g. working with Indonesian airports, police and military;
- Establish an Australian Ambassador for Refugee Protection, to assist the government with high-level advocacy in the region;
- More strategically target humanitarian development assistance programs that benefit local communities and asylum population such as access to housing, livelihoods and education;



- Support regional efforts through the Bali Process Secretariat to work with regional governments and civil society organizations in developing a sustainable and effective regional response;
- Demonstrate best practice in assisting asylum seekers, which would mean putting time limits on detention and urgently improving other aspects of immigration detention in Australia.

How the New Regional Plan of Action might look

Under a lasting regional Plan of Action it would be essential that countries that commit to action are not left to carry the burden of managing and maintaining irregular migrants for prolonged periods. A sustainable and effective regional response would include full recognition that all stakeholders in the process – such as host or resettlement countries, international agencies, local and international NGOs – would play a clear and contributive role.

In countries of origin

- Increased resettlement directly from refugee producing countries
- Increased diplomatic efforts to address asylum and displacement issues in refugee producing countries.

In countries of first asylum

- Make sure clear and trustworthy information is available to asylum seekers about the processes of application and resettlement, which mean people will be less likely to believe they have no option except boarding a boat
- Humane conditions of reception and protection, including services to sustain an adequate standard of living, and protection against refoulement
- Directly fund civil society groups and NGOs to provide education, training, health services and capacity building initiatives in countries which lack formal refugee rights to provide genuine protection while asylum seekers wait
- Use safeguards and oversight to ensure that repatriation is genuinely voluntary and enables people to return home with dignity.

In countries of resettlement

- Clear commitments to ensure that responsibility for refugee protection is shared equitably by resettlement states, including commitment to resettlement quotas. Resettlement states could include industrialized countries from outside our region
- Continue to expand on regional structures and developments through the Bali Process and the UNHCR Working Group on Resettlement
- Investment in lobbying participating countries to sign the Refugee Convention and develop domestic legislation in accordance with human rights obligations.



PROPOSALS THAT WILL NOT SAVE LIVES

In the political debate of recent years there have been a number of 'solutions' put to the parliament and the concerned Australian public. Each of the proposals below relies on people continuing to board boats *before* they are intercepted by Australian authorities and thus trigger the 'solution'. These proposals are punitive, unsustainable, in breach of our international obligations and have not been shown to work effectively. The Greens' proposals outlined above establish safer pathways and provide strong disincentives to boarding boats at all.

The Australian Greens strongly recommend that the following proposals should **not** be pursued for reasons identified at each point.

The Malaysia People-Swap

- The Malaysia people-swap proposed by the government will not save lives. It is a purely punitive proposal that involves sending people back to a country that is not a party to the Refugee Convention. It will not save lives or assist anyone to find protection, but rather would see Australia shrugging off its responsibilities onto our neighboring nations which are significantly less equipped to provide adequate legal protections to asylum seekers and refugees.
- The High Court ruled that this proposal is unlawful in 2011 because, under Australia's *Migration Act*, we cannot refole people who have already reached Australia to a nation that does not have laws in place that recognize and protect refugees from persecution. The arrangement between Australia and Malaysia was expressly non-binding, and Malaysia currently does not recognize the status of refugees in its domestic laws.
- The UNHCR made it clear in its 2011 statement on the Malaysia proposal that it was not fully supportive of the arrangement, *even if* the highly contingent and wholly unguaranteed human rights protections for the people returned to Malaysia were able to be achieved. The UNHCR's statement stated clearly, "The UNHCR's preference has always been an arrangement which would enable all asylum-seekers arriving by boat into Australian territory to be processed in Australia. This would be consistent with general practice".
- Given the lack of legally binding protections in Malaysia even under the government's proposed arrangement, strong reliance must be placed on reports from human rights NGOs. Amnesty International's report released in 2011 which documented serious human rights abuses against refugees in Malaysia, including approximately 6000 'judicial canings' of refugees each year, high levels of harassment against unaccompanied women and girls, and high levels of arbitrary detention.
- The 'Oakeshott Bill', which was adopted by the government in the last sitting period, sought to strip out the very section of Australia's *Migration Act* that imports into domestic law our obligations arising under the Refugee Convention and Protocol. Additionally, it proposed that the Immigration Minister would be able to declare any country party to the Bali Process to be suitable for transfer for asylum seekers, including refugee producing nations such as Afghanistan, Syria, Iran, Iraq and China.



Offshore processing in Nauru

- Offshore processing such as the 'Pacific Solution' did not work as a deterrent. Boats continued to arrive after the Pacific Solution was established, and people still drowned at sea. The reduced arrivals should be seen in light of relatively lower global displacement numbers over those years.
- The former Secretary of the Department of Immigration, Mr Andrew Metcalfe, confirmed in October 2011 that there would be little deterrence value in reestablishing Nauru as a site for off-shore processing.
- The reason off-shore processing did not work was that the persecution and fear that pushed people to seek Australia's protection were always more compelling and frightening than the threat of years on Nauru or Manus Island. Second, over 70% of people who were assessed as refugees from Nauru were ultimately accepted permanently into Australia or New Zealand. This is precisely what would happen again were off-shore processing to be resumed. Concurrently, Australia would have no legitimacy or ability to call on another nation to take in refugees to whom we have clear responsibility for under long-standing international law.
- Nauru now being a party to the Refugee Convention and Protocol is not enough to ensure that it can be considered a safe place for asylum seekers. The UNHCR has already said it will not participate as both Australia and Nauru are themselves signatories to the Refugee Convention, and Nauru is not a source country, place of first asylum or transit. Australia would have to invest massive financial support in UNHCR or IOM funding to run processing there including updated detention facilities and local infrastructure, and would face the same problems of lack of services, lack of fresh food and water, astronomical air travel expenses for detention staff and health specialists, and chronic ill-health brought on by prolonged detention.

Temporary Protection Visas

- The introduction of temporary protection visas (TPVs) in 1999 did not have any immediate deterrence impact on boat arrivals, which did not begin to slow down until over two years after their introduction.
- What is clear on the evidence is that, rather than deterring people from seeking asylum in Australia by boat arrival, the introduction of TPVs instead changed the demographics of boat arrivals from single men to women and children. Because TPV holders were excluded from being able to bring their sponsor family members to join them, desperate families opted to travel together in search of safety in Australia. It was in this context that the SIEV X tragedy occurred, with the loss of 353 people including many woman and children.
- The idea of temporary protection is in contradiction with international refugee law and geopolitical reality. Many of the people Australia granted TPVs to in the early 21st century were from Afghanistan, and even now it is not a stable or safe place for many people including Hazara people. As it is, over 88% of people who received TPVs under the façade of temporary protection were ultimately granted permanent protection in Australia.



Turning Boats Back

- The proposal to remove fuel and water from asylum seeker boats and/or tow boats back to countries other than Australia has been a discredited policy for years. In recent months it has attracted further criticism from experts in Australia and abroad. In 2011 Chief of Navy Vice Admiral Ray Griggs identified the significant risks posed to both asylum seekers and defence personnel, while former Defence Secretary Mr Paul Barratt recently said that navy personnel would 'hate it' and be unable to support such a policy. Former Navy Admiral Chris Barrie has publicly said that it is an unwise policy that should not be promoted. The Indonesian government is not any more supportive than the Royal Australian Navy, as seen in the July comments of Mr Johnny Hutauruk, the deputy head of Indonesia's recently established Human Trafficking, Refugees and Asylum Seekers Desk.
- The Australian parliament has been advised by Naval officers on numerous occasions that turning boats around leads to panic and desperate action by asylum seekers, and puts naval personnel in a position of facing personal harm as well as ethical difficulty in being instructed to act in a manner contrary to customary and posited international maritime laws.
- This chorus of expert voices have made it clear that it will never be safe to turn boats around to their point of departure or alternative third country destination (in the unlikely event that an acquiescing country in the Asia-Pacific could even be identified).

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