



## WATCHING BRIEF

# AUSTRALIA'S RESPONSE TO ASYLUM SEEKERS: UPDATE

### Introduction

This paper focusses on the recent decisions to change government policies regarding the treatment of people who reach Australia by boat seeking asylum. It follows a more detailed analysis by QPLC (September 2011) of global trends in refugee flows and policies, and Quaker responses.

The last few years have seen increasing numbers of people arriving by boat, several disasters involving loss of life at sea, much public debate in Australia, a High Court decision to rule invalid the Government's proposed 'Malaysia' solution, and a stalemate in Parliament over possible changes in policy. The Government appointed an expert panel to examine the options. The members of the panel were – Air Chief Marshal Angus Houston AC AFC - immediate past head of the Australian Defence Force, Paris Aristotle AM - a refugee advocate, and Professor Michael L-Estrange AO - former head of the Department of Foreign Affairs and Trade.

### The Expert Panel Report

The Panel was given the following terms of reference:

*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 recommendations are shown in full as an appendix. They outline the principles to be followed – an integrated approach for managing asylum and migration flows in the region; regional co-operation; the 'no advantage' test; a fair humanitarian program; and adherence to international obligations.

Specific detailed recommendations are:

- An immediate increase in the number of humanitarian places to 20,000 per year (of which 12,000 are refugees), and a five year increase to 27,000.
- A greater focus on accepting people from South East Asia and the Middle East.
- More resources for a regional co-operation framework in protection and asylum systems, especially with Indonesia and Malaysia.
- Opening of processing centres in Nauru and Papua New Guinea.
- Tightening of family reunion guidelines to prefer those arriving in a regular process.
- Review of refugee status determination.
- Disruption strategies (against people smuggling), but no turning back or boats.
- Better coordination of search and rescue efforts.

## **Response to the Report**

The Government accepted all the recommendations, and immediately introduced legislation into Parliament to implement them. This legislation had passed through both House of Representatives and Senate by 16 August, with the Greens as the only dissenters. Within a week, the Government had announced that there would be an increase in Australia's humanitarian program to 20,000 places in 2012-3, and allocated \$10m for regional capacity-building projects with a special emphasis on the UN High Commissioner for Refugees (UNHCR). especially for work in Malaysia and Indonesia. In a joint media release on 23 August, the Prime Minister (Julia Gillard MP) and the Minister for Immigration and Citizenship (Chris Bowen MP) said: "People who arrive by boat will get no advantage. It's not worth the risk to life and it's not worth the money, because there is absolutely no benefit to getting on that people smuggler's boat".

The Australian representative of UNHCR, Richard Towle, gave an interview to the ABC Radio program *The World Today* on 24 August. He welcomed the Government decision to give greater



assistance to regional capacity projects and UNHCR, and said it should help people feel better and safer and therefore less inclined to put their lives in the hands of smugglers. At the same time, he made it clear that UNHCR did not see itself as becoming involved in off-shore processing in Nauru or PNG. He said: "We believe that under international law very clearly Australia is not absolved of its legal responsibilities to protect people through all aspects of its processing and solutions....we are concerned that in these remote places it is difficult to bring full and credible status to determination procedures ....(and) to maintain an adequate level of health and care for people who may already be suffering from trauma...". He continued that UNHCR was against mandatory detention, and expressed the hope that the transfer of people to Nauru and PNG would not involve detention longer than absolutely necessary to satisfy health and security concerns. UNHCR would continue to monitor what happens.

Responses from the NGO sector have been varied. Human rights groups have generally expressed alarm that the new approach will undermine asylum seekers' rights. The Refugee Council of Australia (RCOA) prepared a detailed analysis of the expert report, and welcomed some aspects whilst querying others. It supported the emphasis on achieving a comprehensive and sustainable regional framework, and the engaging of civil society in capacity building and service delivery. It pointed out, however, that there is no 'regular migration' process against which the 'no advantage' test could be measured. In addition, it felt that the experts had failed to give sufficient attention to the full range of Australia's international obligations under the Refugee Convention – including refugees' rights to education, social security, housing, and employment. RCOA also expressed concern that the decisions on transfer of asylum seekers to off-shore centres gave too much power to the Minister, with no legal review or sunset clause, and did not offer sufficient protection to the asylum seekers.

A joint statement by Christian leaders was issued following the passage of the legislation, and our Presiding Clerk, Maxine Cooper, added her name to that. The statement said that "as Christians, we are called to cross the road to help, to not turn away those in need". It called on all political parties "to meet Australia's responsibilities by accommodating and processing in Australia asylum seekers who reach Australian territory". After expressing concern at the use of punishment and deterrence for asylum seekers, the statement said: "As long as our world is broken and countries are ravaged by war, then people will flee violence and persecution. But as a rich and secure nation, Australia has a particular responsibility to ensure that we work positively with other nations to develop a range of strategies that are grounded in compassion and that seek to honour the moral responsibility we have to victims of violence and persecution".

The on-line advocacy group GetUp emphasised the importance of citizens putting pressure on their elected representatives to ensure that the 'Pacific Solution Mark 2' did not repeat the mistakes of the earlier version. This remains a significant factor for many concerned Australians, as the passing of the legislation may have removed some of the momentum for looking after the interests of asylum seekers. Dr Kim Huynh from the Australian National University, in an article in *The Canberra Times* on 22 August, said that the recommendations of the Expert Panel "need to



be effectively communicated to a broad range of stakeholders in the region...and to convince an Australian electorate that has grown tired of this issue”.

### **Quaker Responses.**

Many Friends have a strong commitment to a compassionate and just treatment of asylum seekers. It remains to be seen how far the new policy will meet the high standards of human rights protection and justice that we seek. As we said in the earlier paper on Refugees:

From a Quaker perspective, the challenge is to affirm our commitment to humane and just policies that reinforce human dignity and encourage compassion. In addition, we must be part of the public debate about how to reconcile the needs and rights of desperate people with the fear of the impact of difference and disruption on our local communities.

To that end Friends can continue to take note of the way in which the new policy operates in practice, can re-affirm the value of Australia adhering to its international obligations, and can offer practical support to asylum seekers granted refugee status and needing community settlement.

Canberra, August 2012

## **APPENDIX: FULL LIST OF RECOMMENDATIONS FROM EXPERT PANEL**

### Recommendation 1

The Panel recommends that the following principles should shape Australian policymaking on asylum seeker issues (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.



### 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 (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 (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 (paragraphs 3.3-3.8).
- The Humanitarian Program be more focused on asylum seeker flows moving from source countries into South-East Asia (paragraphs 3.3-3.9).

### 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 (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 (paragraphs 3.20-3.22).
- Enhanced cooperation on joint surveillance and response patrols, law enforcement and search and rescue coordination (paragraphs 3.20-3.22).
- Changes to Australian law in relation to Indonesian minors and others crewing unlawful boat voyages from Indonesia to Australia (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 (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 (paragraphs 3.29-3.33).

### 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 (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 (paragraph 3.43).

#### Recommendation 8

The Panel recommends that a capacity be established in Nauru as soon as practical to process the claims of IMA s transferred from Australia in ways consistent with Australian and Nauruan responsibilities under international law (paragraphs 3.44-3.55).

#### Recommendation 9

The Panel recommends that a capacity be established in PNG as soon as possible to process the claims of IMA s transferred from Australia in ways consistent with the responsibilities of Australia and PNG under international law (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 (paragraphs 3.58-3.70).

#### Recommendation 11

The Panel recommends that the current backlog in the SHP 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 (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 (paragraph 3.71).

#### 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 (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 (paragraphs 3.72-3.73).

#### Recommendation 15

The Panel recommends that a thorough review of refugee status determination (RSD ) would be timely and useful (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 (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 (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 (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 (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 (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 (paragraphs 3.38-3.40).