



# Newsletter

Number 16 March 2015

## Preparations for National Conference

Robin Rothfield

Labor for Refugees has been actively involved in preparations for the forthcoming ALP National Conference to be held from 24-26 July. For a start, we have sent our proposed policy to the National Policy Forum, the body entrusted to prepare a draft of the platform for consideration of Conference – see <http://australianlaborparty.org/DraftRefugeePolicy.pdf>

The lines from this proposed policy most important to us are the following – taken from paragraph 160 of chapter 9 of the current platform:

*Labor will ensure that:*

- *asylum seekers will not be punished for their mode of arrival*
- *asylum seekers who arrive by air or by sea will be treated the same when it comes to the processing of their claims and access to support while on bridging visas.*
- *Claims to protection made in Australia will be assessed by Australians on Australian territory.*

Secondly, we have been engaged in representations with the union movement in an effort to get trades unions onside. This activity started with the Geelong launch of the book “The Drownings’ Argument” published by Labor for Refugees as a response to those politicians who claim that we need offshore processing in order to stop people risking their lives on boats. This book was launched in Geelong on 11 October 2014 by Ged Kearney, President of the ACTU.

Continuing with this activity to mobilize support for the policies we are taking to National Conference, Labor for Refugees has written to the 36 National Presidents and Secretaries of unions affiliated with the ALP. In this letter, a copy of our book “The Drownings’ Argument” was enclosed. We have also emailed the 192 state based union leaders asking them to let us know if they would like a copy of the book.

### Geelong launch of “The Drownings’ Argument

From left to right:  
Robin Rothfield, Amy Duncan, Pauline Brown, Christine Couzens (State Labor Member for Geelong who hosted the launch), Misha Coleman (Executive Officer of the Australian Churches Refugee Taskforce who wrote chapter 2 of the book), Ged Kearney (President of the ACTU who launched the book) and Harvey Stern.



# Children in Immigration Detention

Harvey Stern

Some weeks ago, the Australian Human Rights Commission's (AHRC) report into children in immigration detention was released with sixteen very important recommendations.



One might have expected that release of the report would have resulted in some constructive discussion of the report's recommendations. **Sadly, no.**

Instead, we saw a most inappropriate debate about the role of the commissioner, with almost no mention of the recommendations.

The current ALP National Platform says that children are not to be detained at all. It also says that, where possible, their parents should not be detained either.

Furthermore, the ALP National Constitution requires that Federal Labor Parliamentarians not even discuss, let alone implement, measures that conflict with the ALP National Platform.

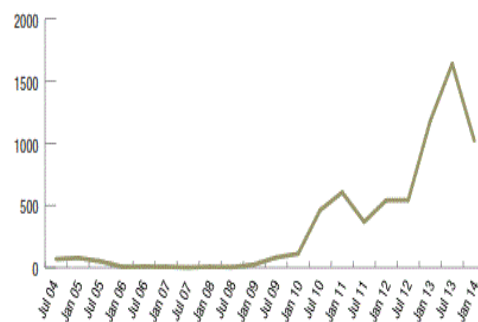
Given the foregoing, one would have expected a statement regretting past actions of Labor in Government, in detaining several thousand children (Figure 1). **Sadly, no.**

Notwithstanding the absence of such a statement of regret, one might have at least expected a promise that a future Labor government would implement all of the recommendations. **Again, sadly, no.**

What should we do now?

The ALP Victorian Branch State Conference has an important role to play.

Chart 3: Number of children in detention, July 2004 to January 2014



Source: Australian Human Rights Commission analysis of data from the Department of Immigration and Border Protection

*Figure 1 The steadily increasing number of children in detention during the terms of the 2007-2013 Rudd/Gillard/Rudd Labor Governments (Source: Chart 3 from the AHRC Report).*

State Conference can support resolutions urging that Federal Labor commits to implementing all of the AHRC recommendations should it win government at the next election (and to work with cross-benchers and minor parties towards that end in the interim).

Such a resolution is scheduled to be moved by **Ilia Vurtel** and **Annalivia Carli-Hannan** (see below). Please support it:

## URGENCY RESOLUTION :

### Implementation of Recommendations of the AHRC Inquiry

That this March 2015 State Conference of the Australian Labor Party (Victorian Branch) recommends to the Federal Parliamentary Labor Party that it urgently commences work with other parties and the cross-benchers in the Commonwealth Parliament towards the implementation of all 16 recommendations of the Australian Human Rights Commission's report, "The Forgotten Children: National Inquiry into Children in Immigration Detention (2014)":

**Recommendation 1** It is recommended that all children and their families in immigration detention in Australia and detained on Nauru be released into the Australian community as soon as practicable and no longer than four weeks after the tabling of this report.

**Recommendation 2** It is recommended that the Migration Act 1958 (Cth) be amended to provide that children and parents may be detained only for a strictly limited period of time necessary to conduct health, identity and security checks. Continued detention beyond this period of time should only be permitted following an individual and periodic assessment by a court or tribunal of the necessity for this continued detention.

**Recommendation 3** It is recommended that the Department of Immigration and Border Protection commence processing refugee applications within four weeks of the tabling of this report and that those found to be refugees be granted Protection visas.

**Recommendation 4** It is recommended that no child or parent be taken to a regional processing country where they will be detained unless that country can provide a rule of law based regime for their assessment as refugees and unless the conditions of detention meet international standards.

**Recommendation 5** It is recommended that all immigration detention facilities on Christmas Island be closed.

**Recommendation 6** It is recommended that an independent guardian be appointed for unaccompanied children seeking asylum in Australia.

**Recommendation 7** It is recommended that an independent review be conducted into the Department of Immigration and Border Protection's decision to approve the use of force to transfer unaccompanied children from Bravo Compound to Charlie Compound on 24 March 2014.

**Recommendation 8** It is recommended that all detention centres be equipped with sufficient CCTV or other cameras to adequately capture significant incidents in detention. All recordings of such incidents in detention centres should be maintained so that these recordings are available as evidence in any review process.

**Recommendation 9** It is recommended that ASIO review the case of each family in detention with a

parent that has received an adverse security assessment in order to identify:

- whether there is a risk in granting the family a visa or placing them in community detention; and
- how any risk could be mitigated, for example by a requirement to reside at a specified location, curfews, travel restrictions, reporting requirements or sureties.

**Recommendation 10** It is recommended that in light of the significant mental health impacts of immigration detention, children currently in immigration detention continue to be assessed at regular periods using the HoNOSCA mental health assessment tool to ensure consistency in screening methodology.

**Recommendation 11** It is recommended that in light of the significant mental health impacts of immigration detention children currently and previously detained, at any time since 1992, have access to government funded mental health support

**Recommendation 12** It is recommended that those children held on Christmas Island who have been denied adequate education from July 2013 to July 2014 be assessed to determine the support they require to meet the learning benchmarks appropriate for their age and stage of development.

**Recommendation 13** It is recommended that all families and unaccompanied children in immigration detention receive information about organisations that provide free legal advice and have regular access to facilities such as phones and IT equipment.

**Recommendation 14** It is recommended that the Convention on the Rights of the Child to which Australia is a party, be implemented by legislation as directly applicable Australian law.

**Recommendation 15** It is recommended that a royal commission be established to examine the:

- long term impacts of detention on the physical and mental health of children in immigration detention;
- reasons for continued use of this policy since 1992, including offshore detention and processing; and
- remedies for any breaches of the rights of children that have been detained.

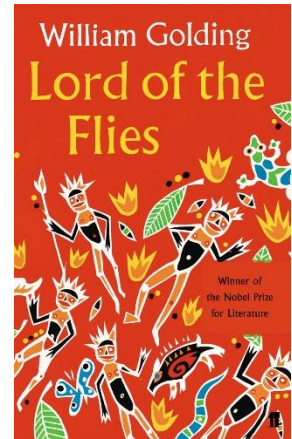
**Recommendation 16** It is recommended that an independent review be conducted in 12 months to identify the implementation of these recommendations.

# March Conference

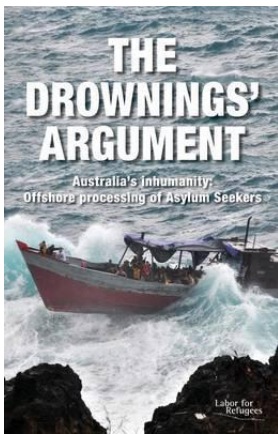
Frances Scholtz

For the past few Conferences I have been involved in the publication of this Newsletter. I can assure readers that each time I find this task more difficult. The waters become muddier and the issues more complex.

When the current and past Asylum Seeker policies are reviewed in the future no one will emerge with clean hands and just when you think that our Asylum Seeker policies and the ramification of these policies can't get any worse, they do! Recently I reread William Golding's "Lord of the Flies". On the blurb at the back of the 1954 edition Kingsley Amis comments that the book is "Terrifying and haunting". It is. Just when you think things can't get any worse, they do, until all but Ralph become savages and, when they are unexpectedly rescued, the rescuing officer observes that they could be described as "tiny tots some of them, brown with distended bellies of small savages". (p 214) They are children. The story can be interpreted as a parallel for the adult world.



During the past 12 months our Asylum Policy and its ramifications have sunk to an all-time low. Riots on Manus, the occasional death, arguing about who is responsible - the PNG Government, the current Security Company or the Australian Government. All parties lay responsibility at the feet of the other party. Who actually cares?



I believe we have blood on our hands and it is evident that most people are happy to go along with Julian Burnside's observation written on the back cover of the "The Drownings' Argument" (A Labor for Refugees publication)

*"People like Abbott and Morrison express their concern about refugees who drown. They are not sincere, but it provides a vaguely respectable excuse for harsh policies. I will say this plainly: when Abbott and Morrison say they are worried about refugees drowning on their way to Australia they are lying: they are deceiving the public. It opens the way to mistreat asylum seekers who have not drowned, and helps them pursue the darker purpose of keeping refugees out."*

And putting aside the moral and ethical aspects of the issue there is the cost, the cost is unbelievable as well as unsustainable. And yet no one complains about this vast amount of money being frittered away, much of it lacking transparency and accountability.

The present Government wants peace and quiet at any cost. And then there is this crazy veil of secrecy. For example ('The Age' p6, 6/3/15) Having succeeded in "stopping the boats", it appears the Abbott government has opted for a cheaper alternative to the orange life-boats, which cost the government \$7.5 million last year. It is believed each orange life-boat which can be used only once, costs about \$200,000. This continuing saga is a joke and a very expensive joke. The Immigration Department is not prepared to divulge information. Why? National Interest of course. The Australian populace is being treated like children and apparently this suits them. Who are we going to tell? It is absurd!

And then there is Gillian Triggs fiasco. A coalition senator on a Senate inquiry into the report admitted and was proud of the fact that he hadn't read the report. It wasn't worth it. This is the report by the Human Rights Commissioner, Gillian Triggs, into children in detention. And then the Commissioner had to undergo hours of grilling by the Senate committee.

To paraphrase Laura Tingle, (AFN) Chris Ullman, (ABC) and another journo on the Sunday Insiders (March 1<sup>st</sup>) it was an appalling display. Australia at its worst; nothing uplifting or edifying about that performance. And these are our representatives. We should all hang our heads in shame.

## The cost of keeping people/children in detention

Locally, in Australia, a parliament committee examining justice reinvestment in Australia, has produced the latest statistics on our prison system. It is said that it costs more than \$300.00 per day to keep a prisoner in jail and more than \$600.00 a day to keep a juvenile in detention.

It is difficult to calculate the exact financial cost of our policy of mandatory detention. What is clear however, is that it is exorbitant. *"The Abbott government has spent more than \$1.2 billion to run detention centres on Manus Island, Nauru and Christmas Island in one year reflecting both the increase in numbers and the greater cost of administering detention centre in Nauru and PNG than mainland Australia. Unsurprisingly, the more remote the place where you lock people up the more expensive it is".* (The Age. p6, 26/3/15)

Then there is the ongoing cost of mental health expenses per person over their lifetime and this could equate to an extra \$25,000. What a shemuzzle. It is apparent there is little if any supervision of how the money is spent. Last Year Labor for Refugees invited Martin Appleby to speak to the group re his experiences as a security training officer on Manus. To begin with the PNG would be security officers did not speak English Martin presented his experiences and evidence re the totally unsatisfactory state of the training process. As the reader considers Martin's report the thought occurs that the whole process is not serious. For a start the location of Manus is on the equator.



Martin observed that

*\*The condition the transferees were expected to live in could be described as inhumane especially for those living in the old War World Two sheds..... Expecting people to live packed like sardines into tin sheds in 35-40 degree heat with only 4 fans to cool the place down.*

*\*There was virtually no shade in any of the compounds and despite the intense heat the guys weren't given any hats and very limited sunscreen. The surface of Manus is coral and the footwear given to the detainees was thongs and then there weren't enough to go around.*

*\*There was limited running water at the facility, even when it worked, but it wasn't drinkable and the lavatories were generally filthy although a company "Spic and Span" was contracted to do the cleaning.*

*\*We also didn't have enough hand-held radios for all of the staff and there was only one battery per radio so they were constantly running out of battery life.*

*\*And not surprisingly one of the objectives of the security company was to keep costs down so they didn't employ enough staff.*

Martin presented this report to a Senate Enquiry, under oath, and when the shadow minister was presented with this information he dismissed it even suggesting that Manus was not such a bad location. Reading Martin Appleby's witness statement there is a clear difference between what the Australian Government offers to those on Manus and Martin Appleby's statement.

# Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014

Pauline Brown, Membership Secretary – Labor for Refugees Victoria

The Senate passed the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 just after midnight on 5 December 2014 by a vote of 34 in favour to 32 against. The only cause for hope in listening to the debate in the Senate was hearing eight Labor Senators led by Senator Kim Carr, one after the other rise and passionately argue against the passing of this legislation. At last we saw some work by the Parliamentary Labor Party in this policy area which we could be proud of in its opposition to the measures set out in this cruel legislation. It seems that this government wants to put itself at odds with the international community in our response to asylum seekers as well as our response to climate change.

Whilst I understand that the Minister offered some amendments in his endeavour to obtain enough votes for this bill to pass, I believe that his offer to remove children from detention on Christmas Island was immoral. According to Sarah Whyte in The Age 4 December 2014:

*"Morrison said he wanted children out of the Christmas Island detention centre by Christmas, but would only remove them if the Senate passed the legislation."*

This seems to me to be a form of blackmail. If the Minister was able to remove these children from detention, then he should have done so without delay. There was nothing in this Bill to change his powers in this regard. Indeed it appears that after the passing of the bill, the children were removed from Christmas Island and taken to detention centres in Darwin where they remain. Max Chalmers in New Matilda on 24 February 2015 wrote:

*"The most recent immigration detention statistics reveal no children are currently being held on Christmas Island, though advocates have argued they have simply been moved to different centres."*

The bill enables a number of changes to our obligations to asylum seekers who come to our shores seeking our protection. As Peter Mares wrote in The Saturday Paper, 4 February 2015:

*"Taken together, the amendments represent a further significant hardening of Australia's response to refugees and asylum seekers who come by boat."*

## 1. Turn back asylum seekers' vessels

I continue to hope that our response will one day be more in line with the response of the Italian Navy "Mare Nostrum" i.e. focussed on search and rescue. One major problem with this turn back policy is that we abandon our responsibility for the safety at sea of those on the boats which are turned back. Changes enable the towing of boats beyond Australian waters and leaving them even in the open sea without regard for the asylum seekers' safety. Thus this bill removes our obligations to rescue anyone in trouble on the high seas - a time honoured international convention. In addition, the rules of natural justice as they apply to a range of powers in the Maritime Powers Act are suspended thus preventing oversight by the courts.



## 2. Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs)



There are many reports from the medical professions which talk about the psychological damage caused by TPVs in the past. You are no doubt aware of the adverse effects on the mental health of asylum seekers to have no long term certainty for their future. They have no family reunion rights and live in fear of being returned to persecution. The SHEVs I see as TPVs by another name. Although Clive Palmer in a press conference on 25 September 2014 presented this as a pathway to permanent protection, in practice this would seem to be a remote possibility. As far as enabling access to permanent visas in the future, there is nothing in this bill

which points to the pathway for this. It would seem to me to be a very remote possibility. This was exposed by Labor Senator Jacinta Collins in her work on the Senate Legal and Constitutional Affairs Committee.

## 3. Fast track process and Immigration Assessment Authority

Anyone who has knowledge of people who have suffered trauma would recognise that there are great dangers in this new process. It is likely that genuine refugees will not be able to establish their case in a fast track process. The new Immigration Assessment Authority will greatly diminish the right to proper review of an asylum seeker's case. The rights of asylum seekers to appeal to the Refugee Review Tribunal are removed for those who arrived by boat after 13th August 2012 and the new assessment process does not allow them to present new information at any later stage but relies on the information they provide initially. As asylum seekers are under severe stress upon their arrival, it is not unusual that they do not provide all relevant information in the first instance.

## 4. Removal of reference to the Refugee Convention

These proposed changes mean that Australia is no longer working under the terms of the 1951 Refugees Convention. Since 1954, Australia has been a signatory to the Refugee Convention and now sixty years later, we have taken this retrograde step. I find it hard to put an argument here as I am simply appalled. I cannot believe that we even contemplated doing this. Do we really want to say that we are no longer a good global citizen?

The Bill also proposes many other changes to our processes and compliance with the Refugees Convention. In fact references to the Refugees Convention are removed and replaced with the government's interpretation of its protection obligations in an attempt to avoid scrutiny in the courts. The rule of law is of critical importance to our democracy enabling justice and transparency in decision making.

## 5. Expand the Minister's powers and the 90 day rule

As the question of our response to asylum seekers is an extremely complex one, I believe that there is a need for more checks and balances over all our actions rather than less. This Bill enables the Minister to make decisions which are not subject to review by the courts or by an independent body.

On the question of the 90 day rule, the bill abandons the requirement to make decisions within a limited time frame. Again, I refer to the Italian response. According to the recent ABC documentary on Mare Nostrum "The Italian Response", broadcast on 14 October 2014, the Italians complete the identity, security and health checks (including for Ebola) in two to three hours. I live in the hope that one day we will move towards this model.

Finally, I recommend to the Labor Party, the United Nations High Commission for Refugees publication: *The 10-Point Plan in Action* which is a document all countries can use to tailor their response to asylum seekers and refugees. **It is time we developed policies in line with world's best practice. We should no longer suffer from the tyranny of distance and develop policies based on domestic points of view alone.**

# International Law

Maurie Kelleher

Australia had a key role in the Universal Declaration on Human Rights 1948, through the efforts of an ALP member, Dr H.V. Evatt, who became President of the UN General Assembly 1948 – 49.



## Universal Declaration on Human Rights

**Article 9** No one shall be subjected to arbitrary arrest, detention or exile.

**Article 13** (1). Everyone has the right to freedom of movement and residence within the borders of each state.

(2) everyone has the right to leave any country, including his own, and return to his country.

**Article 14** Everyone has the right to seek and to enjoy in other countries asylum from persecution.

## Geneva Convention on Refugees

- A refugee is clearly defined as a person who is outside the country of his Nationality and is unwilling or unable to return owing to **“a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”**
- Contracting states shall apply the provisions of this convention to refugees without discrimination.
- A refugee will have free access to the courts of law.
- States shall issue identity papers to any refugee in their territory.
- States shall not impose penalties on account of their illegal entry or presence on refugees.

***The definition does not include people who leave their country because of generalised civil disturbance or war, famine, natural disasters or in order to seek a better life.***

## Convention on the Rights of the Child

Came into force 2 September 1990

193 countries are party to it, including every member of the United Nations except Somalia, South Sudan and the United States.



**Article 3** In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of laws, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

**Article 37 (b)** Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation his or her liberty before as court or other competent independent and impartial authority, and to prompt decision on any such action.