

Refugee & Asylum Seeker Policy: A third way

A policy paper on effective approaches to
reducing irregular maritime arrivals.

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Executive Summary

The policy goal of reducing the number of asylum seekers who arrive in Australia by boat is one that many Australians subscribe to. This is different to the notion of ‘stopping the boats’ through harsh and unworkable policies. Offshore processing and temporary protection visas have proven to be ineffective policies; turning boats around on the high seas leads to loss of life. Given the need to seek protection for genuine refugees is so strong, harsh policies are not effective in deterring asylum seekers from seeking protection in Australia.

The key challenge that asylum seekers face in our region is finding effective protection once they are found to be a refugee. Resettlement places are severely limited: both in Australia and elsewhere. Alarming, between 1 July 2009 and 28 February 2011, Australia only granted 518 humanitarian visas to persons in Malaysia and all went to Burmese nationals. In other words, people fleeing Iraq and Afghanistan and who are temporarily residing in Malaysia have no orderly pathway to humanitarian protection in Australia. It is little wonder that a small number of these people engage the services of people smuggling networks.

The current political context presents an opportunity to implement humanitarian approaches to reducing boat arrivals. At the time of writing, a return to the policy of onshore processing looks likely. This report recommends various approaches that could accompany onshore processing. If implemented together, these measures could significantly reduce the need for asylum seekers in our region to engage people smuggling networks.

Chief among our recommendations is the incremental doubling of Australia’s humanitarian program with new visas targeted primarily toward our region. By increasing the number of visas for genuine refugees, we can give asylum seekers in our region hope for a future in Australia should they take up ‘in country’ and ‘source country’ pathways. As Australia currently grants so few humanitarian visas in our region, this hope simply does not realistically exist.

But we must go beyond increasing the number of refugees we take. The improved protections for those who were to be transferred to Malaysia under the Malaysian Arrangement were a step in the right direction. Australia should work with our neighbours to seek to embed such improvements in protections and conditions for asylum seekers and refugees across our region. Improvements that result in the protection of human rights, freedom from detention and a sense of security and stability during status determination will make it less likely that refugees and asylum seekers embark on journeys to Australia. The Australian Government should lobby consistently for building these improvements in the region.

The High Court decision

On 31 August 2011 the High Court of Australia handed down its decision in *M70/2011 v Minister for Immigration and Citizenship & Anor* [2011] HCA 32. There were two issues in contention: the validity of a declaration made by the Minister for Immigration and Citizenship (the Minister) under s 198A(3) of the Migration Act 1958 (the Migration Act) in respect of Malaysia, and the question of whether a non-citizen child subject to the provisions of the Immigration (Guardianship of Children) Act 1946 (the IGOC Act) could be lawfully sent to another country.

The High Court by majority held invalid the Minister's declaration of Malaysia as a country to which asylum seekers who entered Australia at Christmas Island can be taken for processing of their asylum claims, making permanent the injunctions that had earlier been granted restraining the Minister from taking the two asylum seekers who had brought the actions to Malaysia. The Court also decided that an unaccompanied asylum seeker under 18 years of age may not lawfully be taken from Australia without the Minister's written consent under the IGOC Act. The Court granted an injunction restraining the Minister from removing the second plaintiff, an Afghan citizen aged 16, from Australia without that consent.¹

Following the High Court's decision, GetUp! commissioned former Federal Court Judge Ron

Merkel QC to provide urgent legal advice around the legality of offshore processing regimes proposed in other countries.²

After examining the domestic legislative framework and international obligations currently existing in Papua New Guinea (PNG) and Nauru relating to the protection of asylum seekers and refugees, Mr. Merkel concluded that "there are substantial grounds available to challenge any existing or future declarations in respect of Nauru and PNG."³ He further stated, "on the basis of my present instructions there are good prospects of success in any challenge to any existing declarations and it is not likely that the prospects would be substantially less in respect of any new declaration based on the facts as they are known."⁴

Mr. Merkel's advice was publicly released on Saturday 4 September 2011, the day before the Gillard Government released similar advice by the Solicitor-General.⁵ It is clear from these legal opinions, and others, that in light of the High Court ruling in relation to the Government's proposed Malaysian Arrangement there are also significant doubts over the legality of declarations under s 198A(3) in relation to offshore processing centres on Nauru or Manus Island (PNG).⁶

1. See the High Court of Australia's *Judgment Summary: Plaintiff M70/2011 & Plaintiff M106 of 2011 by his Litigation Guardian v Minister for Immigration and Citizenship*, 31 August 2011, <http://www.hcourt.gov.au/publications/judgment-summaries/2011-judgment-summaries>
2. Ron Merkel QC, *Offshore Processing of asylum seekers in Nauru and Papua New Guinea: Memorandum of Advice*, 2 September 2011, <http://getup-production.s3.amazonaws.com/170-Ron%20Merkel%20QC%20Final%20Advice.pdf>
3. *Ibid.*
4. *Ibid.*
5. Minister for Immigration and Citizenship Chris Bowen, Media Release, *Government Releases Solicitor-General's Advice On High Court Decision*, 4 September 2011, <http://www.minister.immi.gov.au/media/cb/2011/cb171319.htm>

6. See, for example, advice provided by Stephen Estcourt QC for the Edmund Rice Centre (ERC), available at http://www.erc.org.au/index.php?module=documents&JAS_DocumentManager_op=viewDocument&JAS_Document_id=307. Note that this assessment of the current legal framework is also supported by other leading academics and senior legal counsel. Julian Burnside QC has stated that "Offshore processing is effectively dead in the water" (Farah Farouque, *Offshore processing 'dead in water'*, *The Age*, 2 September 2011, <http://www.theage.com.au/national/offshore-processing-dead-in-water-20110901-1job5.html?skin=text-only>) while international law expert Don Rothwell, from the Australian National University's College of Law, has said that probably only New Zealand would qualify as a suitable destination for asylum seekers from Australia (Sky News, 'Opposition says Nauru a good answer', <http://www.skynews.com.au/topstories/article.aspx?id=656682&vld=2673099&cid=Top%20Stories>).

Where to from here?

In light of the High Court's decision and the lack of support in Parliament for the proposed amendments to the Migration Act, a return to the policy of onshore processing seems inevitable. In this context, it is important to consider what options can work to minimise boat arrivals and reduce the incentive of the so called 'product' sold by people smuggling networks. That is, what policy options may be pursued, in conjunction with onshore processing, to try and reduce the number of boat arrivals into Australia.

The policy goal

As is commonly stated in Australian public life, no one wants to see asylum seekers – especially children – get on rickety, overcrowded, unsafe boats and take the dangerous journey to Australia. But to focus on “stopping the boats” is to misrepresent not only the contemporary reality of global irregular migration, but historical fact. Given that asylum seekers have come to Australia by boat in all but a handful of years over the past four decades there is no rational reason to suggest that there are any policy options that will completely stop all boat arrivals.⁷

Recognising both this reality, and the constraints on extraterritorial processing posed by the recent High Court decision, the policy objective should shift from the absolutist goal of stopping all boats to instead focus on substantially reducing, at source, the incentive for asylum seekers to engage people

smuggling networks and make dangerous boat journeys to Australia.

The current regional environment

The reality is that there are only a very small number of humanitarian visas to Australia available through official channels in our region. To take two examples: Malaysia and Indonesia, countries which are particularly significant to Australia as it is here where the majority of asylum seekers transit to Australia, where boats leaving for Australia depart, and where people smugglers are operating.

According to UNHCR, there are currently **more than 90,000** refugees and asylum seekers in Malaysia.⁸ Yet between 1 July 2009 and 28 February 2011, Australia granted only **518** humanitarian visas to persons in Malaysia under the Humanitarian Program - all to Burmese nationals.⁹

Between 1 July 2009 and 28 February 2011, Australia granted **566** humanitarian visas out of Indonesia.¹⁰ This actually represents a huge increase over the previous decade: statistics released by the Department of Immigration and Citizenship (DIAC) in early 2010 indicated that between 2001 and February 2010 just 560 humanitarian visas were granted in Indonesia – that averages at **about 60 a year** over a decade.¹¹

7. “There have been boat arrivals to Australia in 27 of the last 35 years, so the Fraser, Hawke, Keating, Howard and Rudd Governments have all faced similar challenges”: former Minister for Immigration and Citizenship Chris Evans, *Irregular Migration – The Global Challenge*, speech to The Sydney Institute, 24 March 2010 <http://www.minister.immi.gov.au/media/speeches/2010/ce100324.htm>

8. UNHCR, *UNHCR Global Trends 2010*, op cit, Table 1.

9. Department of Immigration and Citizenship response to Question on Notice, Additional

Budget Estimates, 21 February 2011 http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_1011/diac/113.pdf

10. Ibid.

11. Department of Immigration and Citizenship response to Question on Notice, Additional Budget Estimates, 9 February 2010 http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0910/diac/118_qon.pdf.

Where to from here? (cont.)

When avenues for orderly migration to Australia are so limited, you can fully appreciate not only what motivates asylum seekers to seek out people smugglers, but also the impact a substantial increase in the humanitarian intake could have in shifting asylum seekers towards more orderly migration paths.

Reducing incentive for irregular migrants to engage people smugglers

As the Centre for Policy Development (CPD), in its recent paper *A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers*, stated:

New approaches are needed to not only ensure the protection needs of asylum seekers are met but also to stem the flow of irregular migration. A new policy framework is required to enhance capabilities in developing effective responses to protection and irregular migration in the region, and to strengthen regional approaches to stabilising displaced populations. Such an approach needs to be comprehensive in nature and include countries of origin, transit and destination. It must reinforce protection systems in countries of first asylum and transit to make sure displaced people have access to safe and secure shelter, health, education and livelihood opportunities, pending durable

solutions. In other words, developing and strengthening the “protection space” for refugees and asylum seekers in the region.¹²

In building this new policy framework there are some immediate initiatives which the Government could adopt:

1. The Government should continue to build on the work undertaken through the Bali process to assist regional neighbours to create conditions of safety for asylum seekers while their protection claims are assessed in a timely manner.
2. The Government should unambiguously confirm its intention to honour the commitment to an additional 1000 humanitarian places each year for the next four years, as promised as part of the Malaysian Arrangement, even if the Arrangement doesn't proceed.
3. Over and above these 1000 humanitarian places each year for the next four years, the Government should substantially increase Australia's annual humanitarian intake, directing the increase to Australia's immediate region and to targeted programs in key source countries.
4. The Government should build on its own expanded commitments, and utilise Australia's current chairing of the UNHCR Working Group on Resettlement, to encourage other governments to increase their commitment to resettlement.

12. Centre for Policy Development (John Menadue, Arja Keski-Nummi, Kate Gautier), *A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers*, August 2011, p.21 <http://cpd.org.au>

Where to from here? (cont.)

Together these measures would provide greater incentive for asylum seekers to utilise orderly migration procedures rather than seek out the services of people smugglers. These policies should be accompanied by continuing and consistent efforts to build a sustainable regional cooperation framework, the promotion of enhanced protection capacity and burden sharing within the region, and continued work to avert loss of life at sea.

1. Continue to build on the work undertaken through the Bali process to assist regional neighbours to create conditions of safety for asylum seekers while their protection claims are assessed in a timely manner.

The Malaysian Transfer Arrangement proposed a number of positive and important protections for those who were to be transferred to Malaysia under the Arrangement, if able to be implemented. As UNHCR noted, “the Arrangement and its implementing guidelines contain important protection safeguards, including respect for the principle of non-refoulement; the right to asylum; the principle of family unity and best interests of the child; humane reception conditions including protection against arbitrary detention; lawful status to remain in Malaysia until a durable solution is found; the ability to receive education, access to

health care, and a right to employment.”¹³

The Government should continue to pursue genuine multilateral cooperation with our neighbours to improve burden sharing, and build effective protection and practical conditions for asylum seekers and recognised refugees in those countries. Asylum seekers and refugees are less likely to seek onward journeys if their human rights are respected, if they are free from detention, and if they have a sense of security and stability while their status is being determined. For example, through short to medium term recognition of legal permission to remain, work, and access to at least basic health and education services. Conversely, ineffective protection and lack of access to these basic needs leads to insecurity and makes people vulnerable to people smuggling networks. The provision of such support could be complemented by an increase in the humanitarian program, to create real options for asylum seekers and refugees, rather than undertaking dangerous boat journeys to Australia.

In addition, Australia should continue to provide logistical and financial support to UNHCR to improve refugee status determination processes in countries in the region, particularly Indonesia, Malaysia and Thailand. As the Refugee Council of Australia has recently recommended, the Australian Government should work collectively with governments in the Asia-Pacific region to provide asylum seekers in the region with timely access to sound refugee status

13. UNHCR, *UNHCR Statement on the Australia-Malaysia Arrangement*, 25 July 2011, <http://unhcr.org.au/unhcr/>

Where to from here? (cont.)

determination and timely durable solutions and/or a safe return to the country of origin, and work towards the development of a regional agreement to guarantee non-refoulement.¹⁴

2. Unambiguously confirm an intention to honour the commitment to an additional 1000 humanitarian places each year for the next four years, as promised in the Malaysia Transfer Arrangement, even if the Arrangement doesn't proceed.

As a key component of the bilateral agreement with Malaysia, the Government committed in the 2011-12 Budget to increase the *Humanitarian Migration Program* by an additional 1000 humanitarian places each year for the next four years. For some refugees in Malaysia, the availability of an extra 1000 humanitarian visas to Australia each year for the next four years would have removed the need to seek out a people smuggler. Indeed, over recent months the Government has consistently asserted that the announcement of the Malaysian deal had contributed to a reduction in boat arrivals. Since the High Court decision, however, the Government has appeared to qualify its commitment to the increase in the humanitarian program, creating the preconditions for many to again look to irregular routes.¹⁵ The Government should clarify its position.

3. Double Australia's annual humanitarian intake, to offer additional places for vulnerable refugees within the region and to targeted programs in key source countries.

The size of the global challenge of irregular migration is immense, with the demand for resettlement places consistently surpassing the supply. According to the United Nations High Commission for Refugees' *Global Trends 2010* report:

Only a small number of nations offer resettlement programmes, accepting refugees in quotas on an annual basis. The number of resettlement places available has neither kept pace with global resettlement needs, nor with increased submissions by UNHCR.¹⁶

Australia's current humanitarian program, including the expansion associated with the Malaysian Transfer Arrangement, is 14,750 places annually. This comprises 7,000 places in the refugee program, primarily for those who have been referred to Australia for resettlement by the UNHCR and 7,750 places in the special humanitarian program (SHP).¹⁷

14. Refugee Council of Australia, Australia's Refugee and Humanitarian Program 2011-12: Community views on current challenges and future directions, March 2011, http://www.refugeecouncil.org.au/docs/resources/2011-12_IntakeSub.pdf

15. See Minister for Immigration and Citizenship Chris Bowen, High Court decision, Press Conference, Canberra, 31 August 2011, <http://www.minister.immi.gov.au/media/cb/2011/cb171159.htm>

16. *Global Trends 2010* report, United Nations High Commission for Refugees, 2010 <http://reliefweb.int/node/420969>

17. Minister for Immigration and Citizenship Chris Bowen, *Budget 2011-12: Boost to Australia's Humanitarian Program*, Media Release, 10 May 2011, <http://www.minister.immi.gov.au/media/cb/2011/cb165279.htm>

Where to from here? (cont.)

As noted in a recent Parliamentary Library paper, “the 7,750 places currently allocated under the SHP are shared between offshore humanitarian applicants and refugees granted onshore Protection visas (including those processed on Christmas Island) and immediate family members of Humanitarian and Protection visa holders already in Australia.”¹⁸

According to the UNHCR’s *Global Trends 2010* report, during 2010, a total of 98,800 refugees were admitted by 22 resettlement countries, including 8,500 resettled in Australia.¹⁹ Clearly, there is room to increase Australia’s intake: as the Refugee Council of Australia has noted, the current “offshore program is well below its historic high of 89,199 arrivals in 1949-50 and its 35-year peak of 21,917 arrivals in 1981-82.”²⁰

We propose that in order to reduce the need to seek our people smuggling networks in the first place, the Australian Government double its refugee intake and target this increase to applicants in our region.

While there are costs associated with increasing Australia’s humanitarian intake (such as the cost of transfer and resettlement programs), it should be remembered that offshore processing is expensive. It should also be pointed out that a reduction in boat arrivals will reduce processing and detention costs.

A 2007 report by Oxfam and A Just Australia, *A Price too High: the cost of Australia’s approach to asylum seekers*, found that intercepting boats and

sending asylum seekers to Nauru and Manus Island cost the Australian taxpayer more than \$1 billion.²¹ Minister Bowen on 10 September 2011 released DIAC estimates of the cost of a detention centre being operated in Nauru over the four years of the forward estimates, placing the figure at \$980 million.²²

Further, an expansion of the Malaysian Arrangement, which may have occurred had the 800 places been reached, would have also added significantly to the budget bottom line. As Minister Bowen said on ABC TV’s *Lateline* on July 25 2011, “My Malaysian counterpart, [home minister] Mr Hishammuddin [Hussein], has made it clear he regards this as a pilot project, and if it works and is successful, then they will examine potential extensions, and that is completely consistent with my point of view.”²³

The first source of money that could be used to fund an increase in Australia’s humanitarian intake are the funds currently tied to the Malaysian Arrangement. As part of the Malaysian Arrangement, the 2011-12 Budget increased the Humanitarian program by an additional 4,000 places over four years at a cost of \$216.4 million. It also provided \$75.9 million over four years to provide support and maintenance for irregular maritime arrivals transferred to Malaysia under the bilateral arrangement with Malaysia. At a minimum, the Government should transfer funding already allocated for the Malaysia Arrangement to an increase in the Humanitarian Program.

18. Elibritt Karlsen, Janet Phillips and Elsa Koeth, ‘Seeking asylum: Australia’s humanitarian program’, Parliamentary Library Background Note, updated 21 January 2011, p.1, <http://www.aph.gov.au/library/pubs/bn/sp/SeekingAsylum.pdf>
19. UNHCR, *UNHCR Global Trends 2010*, op cit, p 19.
20. Refugee Council of Australia, *Australia’s Refugee and Humanitarian Program 2011-12: Community views on current challenges and future directions*, March 2011, http://www.refugeecouncil.org.au/docus/resources/2011-12_IntakeSub.pdf
21. Oxfam and A Just Australia, *A Price too High: the cost of Australia’s approach to asylum seekers*, August 2007, <http://www.oxfam.org.au/resources/filestore/originals/OAus-PriceTooHighAsylumSeekers-0807.pdf>

22. Minister for Immigration and Citizenship Chris Bowen, *Nauru costs, Malaysia transfer agreement, High Court, boat arrivals, protests, Kevin Rudd*, Transcript of doorstep interview, 10 September 2011, <http://www.minister.immi.gov.au/media/cb/2011/cb171640.htm>
23. Minister Bowen on ABC *Lateline*, subsequently reported by ABC online: <http://www.abc.net.au/news/2011-07-26/chris-bowen-on-malaysia-swap-deal/2810082>

Where to from here? (cont.)

Based on the 2011/2012 Budget figures associated with the Malaysian Agreement, the first year costs associated with an increase in our refugee intake can be estimated at \$30.5m per 1,000. A gradual doubling of the refugee intake, beginning with an increase of 5,000 places this year would, upon adjustment of the saving associated with not continuing with sending people back to Malaysia, would leave \$123.7m to be reprioritised from other areas.

The increase in Australia's Humanitarian program should primarily be directed to Australia's immediate region and to programs in key source countries, closely targeting the caseloads getting on boats. The increase should be closely managed with UNHCR to minimise the creation of a "pull factor" in the region.

The CPD, in its recent paper *A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers*, thoroughly explores the policy challenges associated with the current composition of Australia's offshore humanitarian program, concluding that "if Australia is to make a real difference then we need to be more strategic about how resettlement is used."²⁴

The CPD paper makes a number of important recommendations, including that Australia should work with UNHCR to re-prioritise referred refugee resettlement to address durable solutions for protracted refugee situations in the region. The CPD paper further suggests that Australia "could also establish targeted in-country programs in Sri Lanka and Afghanistan which starts to address the growing

internal displacement issue and has the potential to unlock other migration pathways."²⁵

4. Australia should encourage other governments to increase their commitment to resettlement.

The Government should build on its own commitment to increase Australia's humanitarian intake to encourage other governments to increase their commitment to resettlement – or to develop resettlement programs for the first time.²⁶

Australia assumed the chair of the UNHCR Working Group on Resettlement in July this year.²⁷ This Working Group includes all of the major resettlement countries around the world, including the United States, Canada and many European countries. Meeting in Geneva in October and Melbourne in February 2012, before the Annual Tripartite Consultations next July, Australia is in an influential position to push the case for other countries to increase their resettlement levels. Obviously Australia's case will be more compelling if it has already itself substantially increased its humanitarian intake.

Minister Bowen has already acknowledged the potential in Australia chairing the UNHCR Working Group: "through this and initiatives through the Regional Cooperation Framework, we should be able to expand global capacity to help resolve the challenges we are facing."²⁸

24. CPD, *op cit*, p.29.

25. *Ibid.* 26.

26. The UNHCR *Global Trends 2010* report refers to the first 18 refugees ever to be resettled in Japan arriving in Tokyo in September 2010. According to UNHCR, "the refugees entered Japan as part of a pilot programme that will resettle 90 refugees in the country over three years – Japan is the first Asian country to become a resettlement country." UNHCR, *UNHCR Global Trends 2010, op cit*, p 19.

27. According to UNHCR, "the Working Group on Resettlement was established in the mid-90's to foster and enhance the common efforts on resettlement. It is a consultative body composed by the resettlement countries and UNHCR which meets 3 times a year to discuss policy directions on resettlement and steer the partners' efforts to enhance the use of resettlement as a tool of international protection, a durable solution and a responsibility and burden-sharing mechanism. The June session of the Working Group is expanded to include NGO partners and it is denominated the Annual Tripartite Consultations on Resettlement." UNHCR, *Partnership in Resettlement*, <http://www.unhcr.org/pages/4a16c9246.html>

28. Minister for Immigration and Citizenship Chris Bowen, *Budget 2011-12: Boost to Australia's Humanitarian Program*, Media Release, 10 May 2011, <http://www.minister.immi.gov.au/media/cb/2011/cb165279.htm>

Where to from here? (cont.)

Other measures

These measures are not the only initiatives available to the Government to create an environment where asylum seekers and refugees in the region have reduced incentive to seek out the services of people smugglers, but they represent a number of ways in which the Government could positively and effectively engage in these issues in the immediate to short term.

Other initiatives could include the development of alternative migration pathways – through the skilled or family migration programs – to divert people away from protection and humanitarian processes. The specific targeting of Australia’s overseas development aid budget, through AusAID, to improve protection outcomes in source countries could assist in building a range of durable solutions for those seeking protection – taking pressure off the demand for resettlement places and countering the potential impact of an increase in Australia’s humanitarian intake.

Such initiatives should be accompanied by longer term efforts to build a sustainable regional framework, promote enhanced protection capacity within the region, and continued work to avert loss of life at sea.

Real and sustained efforts to build regional cooperation.

Australia should build on the success of the Regional Cooperation Framework established at the Bali Process Ministerial Conference in March 2011 by adopting a more proactive advocacy position to strengthen relationships in the region.

The Centre for Policy Development has thoroughly explored the importance and potential of regional cooperation in addressing irregular migration in the region in its recent paper. To this end, the CPD paper has recommended the establishment of a small policy unit within the Bali Process Secretariat to work with regional governments and civil society organisations in mapping out the key elements of a regional cooperation and protection framework.²⁹ The CPD paper envisages that this Secretariat would:

- a. Work towards sustainable and practical protection outcomes in the region,*
- b. Scope out the development of common or complementary protection systems for asylum seekers in the region.*
- c. Develop and implement strategies addressing the humanitarian dimensions of displacement, providing practical support arrangements for displaced people in transit, and working towards lasting solutions.³⁰*

29. Centre for Policy Development (John Menadue, Arja Keski-Nummi, Kate Gautier), A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers, August 2011, <http://cpd.org.au>

30. Ibid.

Where to from here? (cont.)

The Refugee Council of Australia, in its March 2011 submission on the 2011-12 Refugee and Humanitarian Program, similarly recommended the development of a parallel NGO process to the Bali Process, to foster the engagement of NGOs across the region in refugee protection issues.³¹ The Refugee Council also proposed the creation of a new position of Australian Ambassador for Refugee Protection, to assist the Government in high-level advocacy on refugee protection issues within the Asia-Pacific region and internationally.

These sorts of initiatives are practical suggestions which the Government could adopt in demonstrating its sustained commitment to a regional approach to asylum seeker and refugee issues. As the CPD has noted, “we cannot engage with our neighbours simply when it is politically expedient to do so.”³²

Promote accession to the Refugee Convention

Very few states in the Asia Pacific region are signatories to the Refugee Convention, limiting effective protection available to asylum seekers and refugees. The Government should therefore devote particular efforts to promote accession to the Refugee Convention in the region and enhance protection capacity among existing signatories.

Averting loss of life at sea

The reality is that boat arrivals will continue at some level into the future - the key is to minimise and manage the arrivals as effectively as possible. In addition to supporting the creation of protection opportunities in countries across our region, so that asylum seekers can access alternative pathways to safety, Australia should continue its efforts towards averting loss of life at sea by broadening its already extensive cooperation with neighbouring countries and enhancing its maritime rescue operations, in accordance with the relevant laws of the sea and UNHCR policies relating to maritime interception and asylum.

31. Refugee Council of Australia, *Australia's Refugee and Humanitarian Program 2011-12: Community views on current challenges and future directions*, March 2011, http://www.refugeecouncil.org.au/docu/resources/2011-12_intakeSub.pdf

32. Centre for Policy Development (John Menadue, Arja Keski-Nummi, Kate Gautier), *A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers*, August 2011, p. 5 <http://cpd.org.au>

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This paper draws heavily on ideas developed by the Centre for Policy Development in their recent report, *A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers*, by John Menadue, Arja Keski-Numni and Kate Gauthier. Their report, endorsed by several prominent Australians, including Heather Ridout, Ged Kearney, Michael Chaney AP, Frank Brennan AO SJ, Janet Holmes a Court AC and others, can be found in its entirety at: <http://cpd.org.au>.

The views and recommendations expressed in this paper are those of the commissioning organisations and do not necessarily represent the views of any of the individuals who contributed to or reviewed the paper.

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