

RESTORING SOVEREIGNTY AND CONTROL TO OUR BORDERS
POLICY DIRECTIONS STATEMENT

27 MAY 2010



INTRODUCTION

People smuggling is an inhumane business that puts people's lives at risk. People die on boats. Furthermore, every place provided to a person who has arrived illegally by boat is a place denied to another person in potentially greater need, seeking to come to Australia by legal means.

Australia is a generous country, yet Australians do not like to have their generosity abused or taken for granted. Denying people smugglers the certainty of selling permanent residency to Australia is critical to crippling their business and stopping the boats. Any policy that continues to provide an incentive to this business is neither tough nor compassionate.

The Coalition has demonstrated in Government the resolve, policy and commitment required to stop the boats. These policies save lives and protect the fairness and integrity of our immigration system. We will do it again.

The Coalition Government employed a strong network of policies that kept Australia's borders secure and significantly reduced people smuggling activities to Australia. Key elements of the Coalition strategy were:

- **prevent the problem** by minimising the outflows from countries of origin and secondary outflows from countries of first asylum;
- **disrupt people smugglers** and intercept boats en route to Australia, while ensuring that those people in need of refugee protection are identified and assisted as early as possible;
- **receive and return** by developing appropriate reception/detention arrangements for unauthorised arrivals who reach Australia, processing all applications off shore and focusing on the early assessment of the refugee status of the individual, the prompt removal of those who are not refugees, or who are refugees but can access effective protection elsewhere, and the removal of additional benefits such as permanent protection visas, access to the family reunion programme and access to Australian domestic courts to pursue appeals that are not required by the UN Convention on Refugees.

In August 2008, the Rudd Labor Government began the process of rolling back the strong border protection regime they inherited from the Coalition. Since then, there have been 128 illegal boat arrivals carrying 5,932 people at the date of publication.

In November 2009, the then Leader of the Opposition restated four core principles that would govern the Coalition approach to this issue in Government, namely:

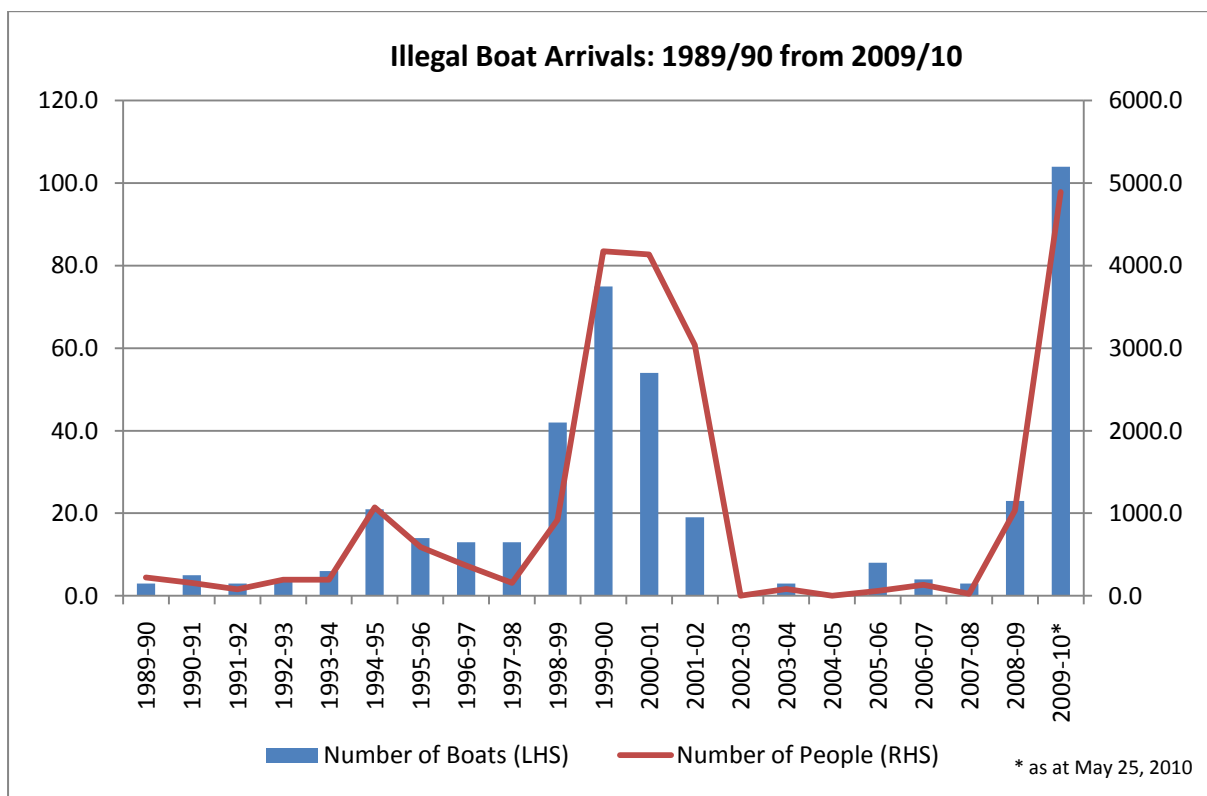
- **secure our borders** - stamp out people smuggling and effectively deter unauthorised arrivals while at the same time treating refugees compassionately in accordance with our obligations under the Refugees Convention.

- **all processing offshore** – ensure that unauthorised arrivals seeking asylum are intercepted and processed offshore at Christmas Island, not on the Australian mainland as Mr Rudd is preparing to do.
- **a non-permanent visa for unauthorised arrivals** - introduce a non-permanent visa for asylum seekers arriving without authorisation, rather than permanent residency.
- **a compassionate and fair refugee and humanitarian program** - maintain Australia’s substantial humanitarian program for refugees who come to Australia through legitimate processes. This intake will always favour those most in need.

Upon becoming Leader of the Opposition, Tony Abbott has added to these commitments by announcing a Coalition Government would turn boats back where the circumstances allow. This paper sets out additional policy detail on these commitments as part of the Coalition’s policies to restore sovereignty and control to our borders. This was promised by Mr Rudd as Opposition Leader but he has never acted on this in Government.

BACKGROUND

In 2009/10 104 boats have already arrived illegally, carrying 4,893 people. This is not only the highest number of boats and people to arrive illegally on record, it also represents an increase of more than 350% on last year.



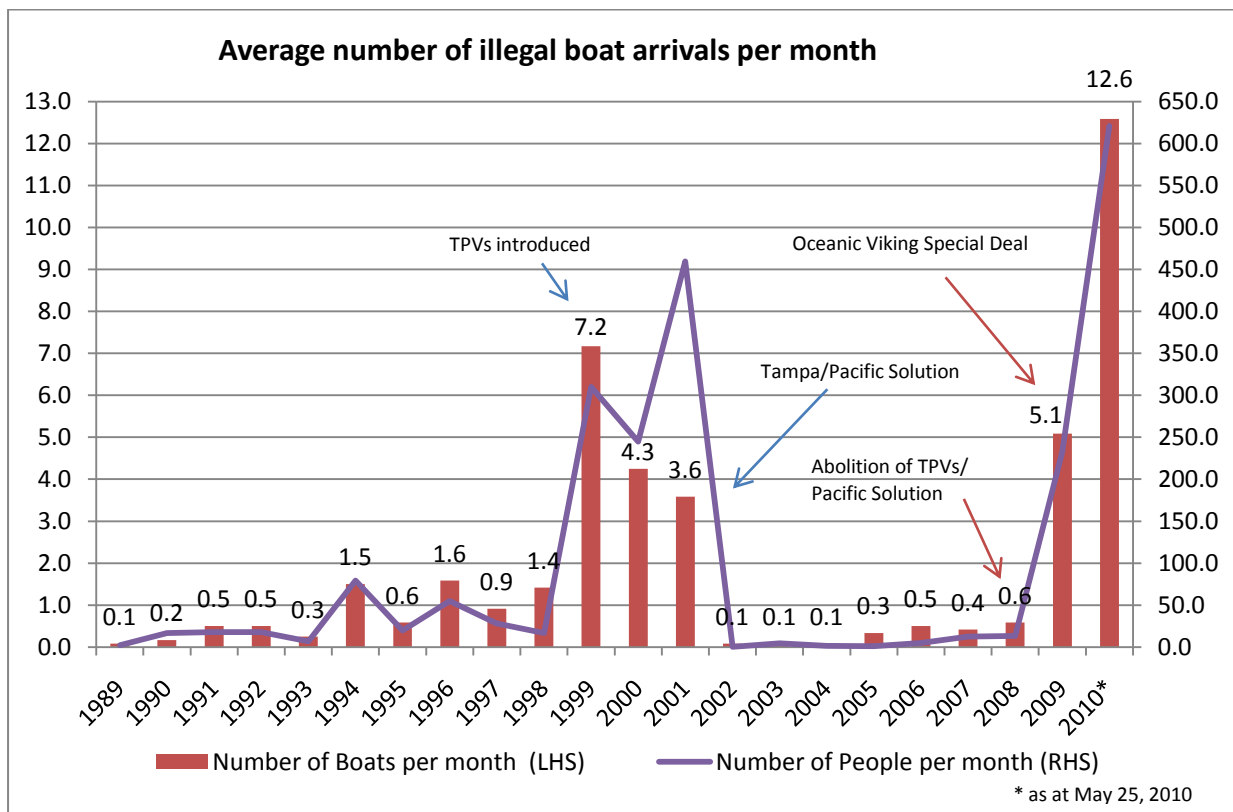
From 1999 to 2001, Australia also experienced a surge in illegal boat arrivals. At that time, the number of global asylum applications was more than 55% higher than they are today. In response, the Coalition Government adopted a comprehensive and integrated cross-portfolio strategy that included legislative and regulatory changes designed to deter illegal arrivals.

The success of this strategy, culminating in the establishment of universal off shore processing and the excision of territories from our migration zone, led to an abrupt halt in illegal boat arrivals in 2002. In the last six years of the Coalition Government, there was an average of just three boats and fifty people per year.

During this time the Coalition continued to operate our off shore processing policy on Nauru, and developed a new facility on Christmas Island, described by Labor as a ‘white elephant’ after their election in November 2007. In addition, the Coalition also introduced significant reforms to detention policy in Australia, including the removal of children and families from detention and the introduction of parallel processing to reduce the amount of time spent in formal detention.

In August 2008, the Rudd Government began the process of winding back the Coalition’s strong border protection regime, in particular:

- the abolition of temporary protection visas and the award of permanent protection visas to persons illegally arriving seeking asylum,
- the closure of the off shore processing and detention centre on Nauru and the abolition of universal off shore processing and detention of all illegal boat arrivals,
- the abolition of the promise to turn boats back where circumstances allow; and the special processing deal offered to the 78 passengers taken on board the Oceanic Viking.



As a result, illegal boat arrivals are now occurring at the highest rate on record - we have gone from an average three boat arrivals per year since 2002, to an average of more than three per week. The number of people arriving illegally by boat has also risen from an average of just under 50 per year to 620 per month.

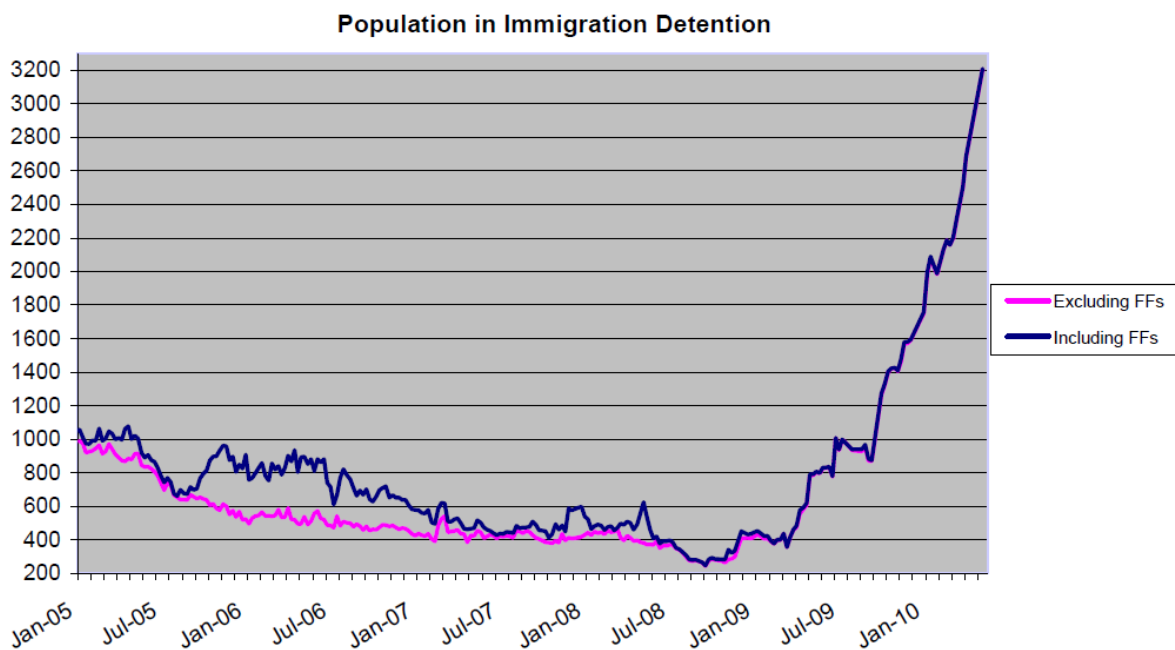
The impact of this unprecedented rate of arrivals under the Rudd Government's failed policies has overwhelmed our detention network.

On 30 July 2008, there were only six people detained on Christmas Island. The Christmas Island Immigration Detention Centre (IDC) at North West Point and associated facilities at Phosphate Hill and Construction Camp are now full, with almost 2,500 people in detention or related facilities.

The increase in illegal boat arrivals has resulted in a \$1 billion blowout in this year's Budget. This comprises a \$777 million increase in off shore asylum seeker management expenses and \$236.5 million to be spent on capital items including additional accommodation on Christmas Island, reopening the Curtin detention centre and upgrades to other centres around the country.

Detainees are now being routinely transferred to the mainland, prior to their processing (including appeals) being completed.

As at 6 May 2010, 860 persons who had arrived illegally by boat were being held in on shore detention centres, including crew, after being transferred from Christmas Island. These detainees also included 122 detainees at Villawood whose asylum claims had been rejected and were undertaking their merit appeals.



FF denotes foreign fishers

Source: Department of Immigration and Citizenship

Between January 1 and May 7 of this year the number of people in detention and related accommodation on the mainland increased by more than 240% from 329 to 1,126 people. On 9 April 2010, the Rudd Government compounded this problem by suspending assessment of asylum claims for applicants from Afghanistan and Sri Lanka for a period of six months and three months respectively. They further indicated that persons subject to the suspension would be transferred to the mainland, with single males to be accommodated at the Curtin detention centre, to be reopened at significant cost by the Rudd Government. Since 9 April 2010, there have been 22 illegal boat arrivals carrying 987 people.

Labor's suspension policy has not only proved to be ineffective, it is exacerbating the escalation of the detention population.

Incredibly, despite the significant increase in the on shore detention population, the Rudd Government has made no allocation in the Budget to cope with the increased costs, including the reopening of the Curtin detention centre. This will undoubtedly lead to yet another budget blow out in these expenses.

POLICY

1. TURN BACK BOATS

Where circumstances permit and vessels can be safely secured, the Coalition will return boats and/or their passengers to their point of departure or an alternative third country destination.

The Coalition will work to implement this policy through secure interception of vessels, whether in international waters, our contiguous zone or in Australian waters, consistent with the Migration Act, and by restoring relationships with regional neighbours to enable return of vessels and their passengers in a manner consistent with our international obligations.

In particular, these requirements require a commitment from the return country not to refool persons seeking asylum to the place from which they claim to be fleeing persecution.

Also, where a person seeking asylum from their home country has arrived in Australia illegally or under a valid visa, and has residency rights in a third country, they will be returned to that country of residency and their asylum claims will not be assessed.

2. NO-COMPROMISE ON OFFSHORE PROCESSING

On 13 November 2009, the then Leader of the Opposition issued a statement committing the Coalition to ensuring all unauthorised arrivals seeking asylum were intercepted and processed offshore at Christmas Island, not on the Australian mainland as Mr Rudd is preparing to do.

Given that Christmas Island has reached and exceeded its sustainable capacity, the Coalition, if elected, will commence discussions at a government to government level to identify alternative offshore processing and detention options for illegal boat arrivals in another country. These discussions will be subject to alternative off shore arrangements in existing excised Australian territories not being available or considered unsuitable for our purposes.

This facility will be available to accept illegal arrivals on vessels intercepted by Border Protection Command and would become the preferred place of detention.

The Coalition will seek to promote discussion of alternative off shore facilities becoming shared facilities as part of a broader regional agreement to address people smuggling and related issues and potentially involve participation by other countries within our region.

The Coalition's preference would be for the facility to be operated by the International Organisation for Migration (IMO), with potential support from sponsor countries in the region. Persons detained at this facility would have their refugee status assessed in accordance with UNHCR guidelines. Those whose claims were successful would be eligible for resettlement under the UNHCR's global resettlement programme.

While Australia would participate in resettlement, we will not take blanket responsibility for all those transferred to this facility.

Any discussion of third country processing locations can only be held between Governments, as occurred when the Coalition last introduced these types of measures. The Rudd Government has refused to consider these options.

The Coalition will therefore not identify potential locations for such facilities in Opposition, so as not to prejudice such discussions in government. Such discussions from Opposition would also compromise the integrity of other national governments who must rightly deal with the Government of the day.

The Coalition believes that off shore processing in another country provides the necessary deterrent to discourage illegal boat arrivals and enables boats intercepted to be taken to non Australian territory, thereby enabling the Coalition to meet our commitment to turn back the boats in a manner that is consistent with our international obligations.

The Coalition will also seek to clarify the legal status of 'off shore entry persons' under the Migration Act, when transferred to the mainland. At present, the Migration Act appears to be silent on this matter. In Government, the Coalition introduced protections to quarantine persons transferred from other countries (Nauru and Manus Island) to Australia for temporary purposes from access to our courts. It is not clear that these provisions apply to the transfer of persons from Christmas Island.

A Coalition Government will put the issue beyond doubt and introduce changes to the Migration Act to apply the 'transitory person' provisions to all off shore entry persons detained on Christmas Island, not just those in other country locations.

Under the Coalition's proposal, only transitory persons may be transferred to the Australian mainland. Under these provision they must be returned to their off shore location within six months.

3. TEMPORARY PROTECTION AND MUTUAL OBLIGATION

A person's status as a refugee is not defined as permanent under the UN Convention for Refugees. The Rudd Government's decision to freeze asylum claims for persons from Afghanistan and Sri Lanka, due to their view regarding changing circumstances in these countries, recognises this fact.

There is also no universal right to permanent settlement or associated obligation to provide such permanent settlement for signatory countries to the UN Convention and Protocol on the Status of Refugees.

Not including the Palestinian territories, there are 10.5 million people who are classified as refugees or in like circumstances in the world today. The UNHCR estimates that fewer than 1% of these individuals will receive a resettlement outcome.

For the vast majority of refugees, their durable solution will be a voluntary return to their home country, when conditions allow.

The Coalition supports permanent resettlement of people under our Refugee and Humanitarian programme. The Coalition is keen to ensure these programmes are made available to people based on the priorities and needs as determined by the Australian Government, rather than imposed by illegal arrival of persons who subsequently seek asylum.

The Coalition prefers such applications for protection and humanitarian visas be made off shore through the UNHCR or by persons who are lawfully in Australia.

The Coalition believes that all practical steps should be taken to discourage the illegal arrival of persons by any means for the purpose of seeking access to our refugee and humanitarian visa programme, as an alternative to making such claims off shore or by some other legal arrival method.

3.1. Restore Temporary Protection Visas

Consistent with the announcement by the then Leader of the Opposition on 13 November 2009 to introduce a non-permanent visa for asylum seekers who arrive without authorisation, the Coalition will re-introduce temporary protection visas (TPVs).

TPVs will be provided where persons who have successfully sought asylum have arrived illegally by any means or where persons entered Australia on a valid visa but were in breach of their visa conditions at the time of their application, such as over-stayers.

TPV holders will have no family reunion rights and, if they decide to depart Australia, no right to re-enter the country.

Only off shore protection visa applicants and those who are lawfully in Australia will be eligible for a permanent protection visa when seeking asylum.

TPVs will be provided for a period of between 6 months to no more than three years. Upon expiry of the TPV, further applications will be assessed in appropriate cases.

If, after the term of this visa has expired, it is established that the visa holder still has a well founded fear of persecution in their country of origin and there are no alternative asylum options available to them, they will be eligible to apply for an extension of their temporary protection visa or permanent protection visa. The Australian Government will have the option to award either form of visa, regardless of the application.

If they are found not to be in need of ongoing protection, they will be returned to their country of origin.

Upon re-introduction of TPVs the Coalition Government will lift the discriminatory suspension of assessment of asylum claims by persons from Afghanistan and Sri Lanka. Under the Coalition there will be one rule for everyone who seeks to arrive illegally, regardless of nationality, religion or race.

3.2. Require mutual obligation for benefits

TPV holders will have work rights and access to Medicare and other benefits as previously provided under the Coalition Government's TPV regime. Consistent with the previous Coalition policy in Government, should a TPV holder be unable to find work, they will be able to access income support through special benefit payments.

These payments are set at the discretion of Government and may not exceed the rate to which youth allowance, Austudy payments or Newstart allowance might otherwise be available to these persons.

A Coalition Government will require that access to benefits, in particular income support, will be subject to satisfying mutual obligation requirements to undertake work in return for accessing these benefits – i.e. work for benefits.

Persons with TPVs of greater than twelve months duration will also have access to settlement services and be required to attend English language classes, skills training courses, job placement and participate in other mandatory settlement programs to assist with their integration into Australian society and culture, as directed by their relevant settlement case officer.

The Minister will be given discretion, by exception, to grant access to additional settlement services or support as required.

3.3 Restore the 45 day rule

The Coalition will also re-introduce the 45-day rule abolished by the Rudd Government.

The Coalition Government introduced the 45 day rule to prevent abuse of on shore refugee applications and processing regime and to limit the making of vexatious claims.

This rule required applicants to lodge an application for a protection visa within 45 days of arrival if they wished to access work rights and Medicare benefits in Australia. Exemptions could be made through Ministerial intervention in exceptional circumstances.

By abolishing the 45 day rule an international student, for example, could make a protection claim at the end of years in the country and obtain (or retain) work rights and Medicare benefits while the application was processed. This could extend their stay for several years if the applicant utilised the full range of administrative and judicial review mechanisms.

COSTS

The initiatives outlined in this proposal will be funded from within the Government's existing budget estimates and projections.