

RESTORING SOVEREIGNTY AND CONTROL TO OUR BORDERS
POLICY DIRECTIONS STATEMENT

21 July 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 Labor Government began the process of rolling back the strong border protection regime they inherited from the Coalition. Since then, there have been 147 illegal boat arrivals carrying 7010 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:

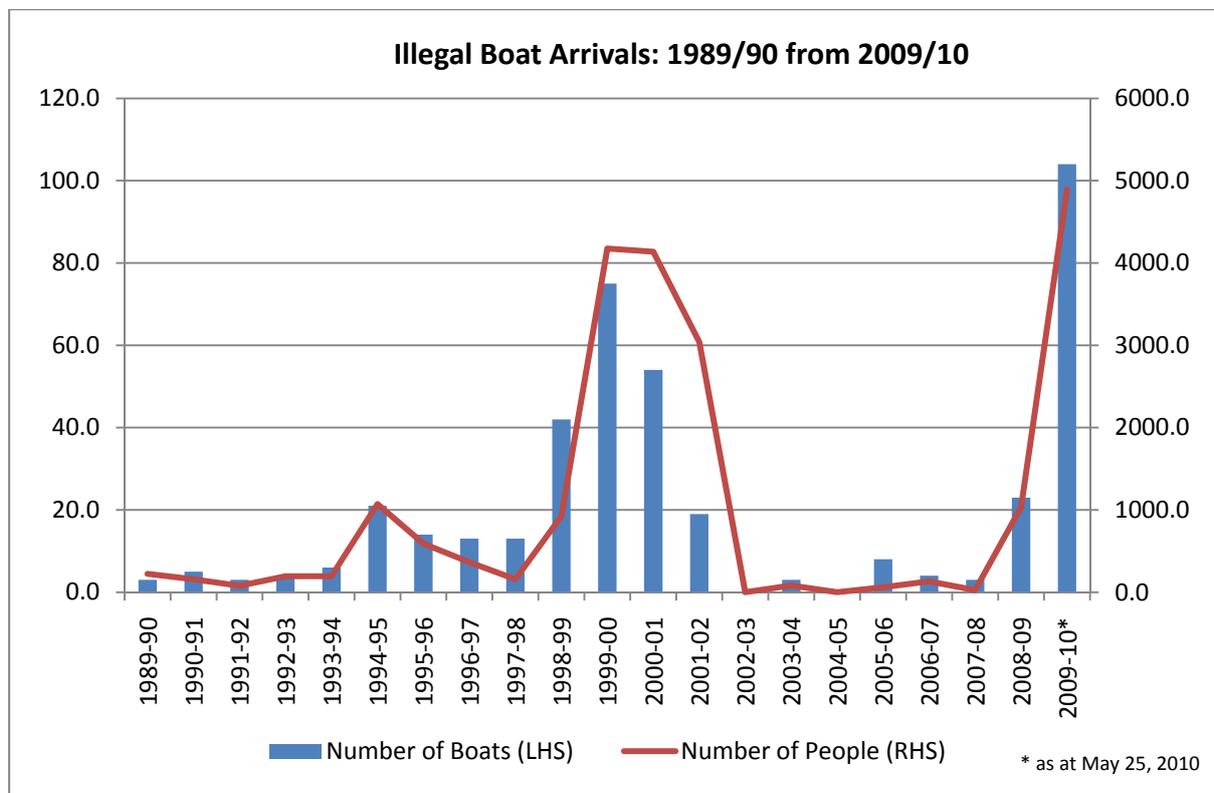
- **secure our borders** - stamp out people smuggling and effectively deter unauthorised arrivals while at the same time treating refugees compassionately in accordance with our obligations under the Refugees Convention.

- **all processing offshore** – ensure that unauthorised arrivals seeking asylum are intercepted and processed offshore at Christmas Island, not on the Australian mainland as the Labor Government has done.
- **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, and supported by Julia Gillard, prior to the previous election. However, the Labor Government has since ruled out this as an option with the current Prime Minister claiming that it will never happen.

BACKGROUND

In 2009/10 117 boats arrived illegally, carrying 5,614 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.

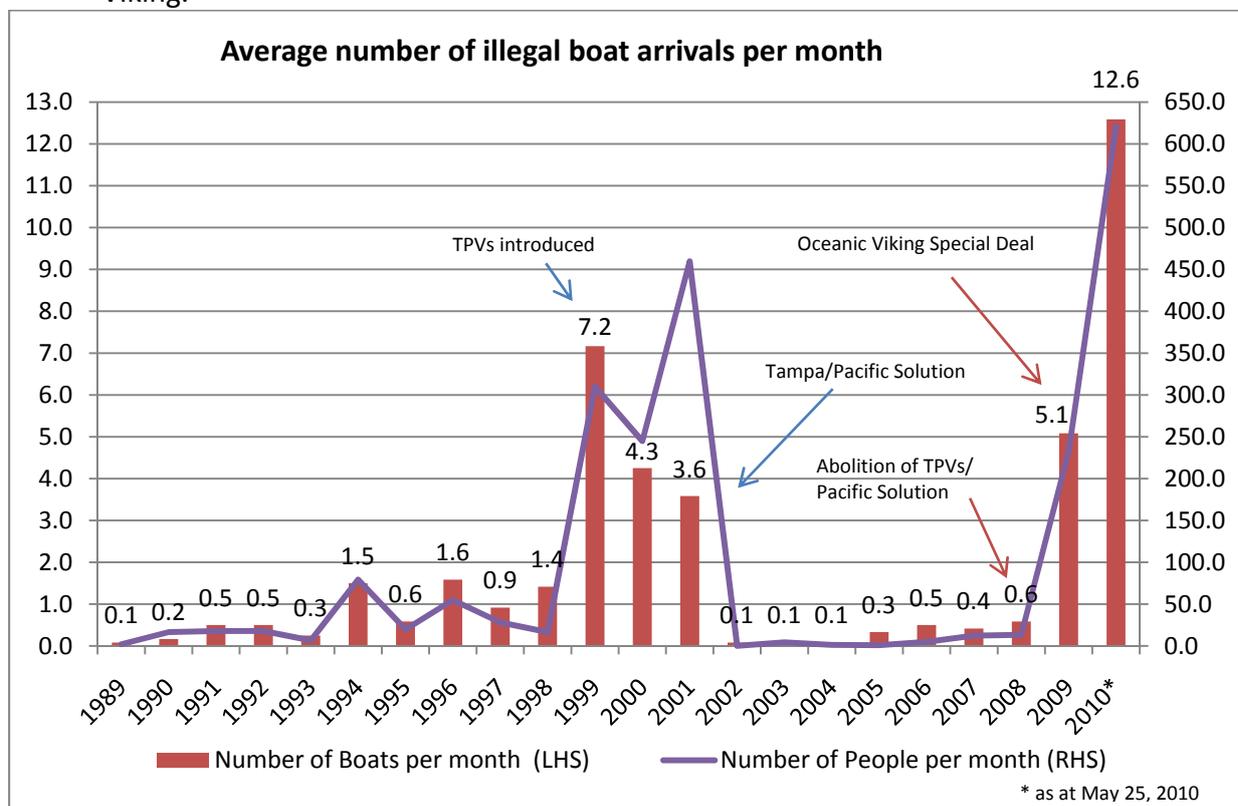
In response, the Coalition Government adopted a comprehensive and integrated cross-portfolio strategy that included legislative and regulatory changes designed to deter illegal arrivals.

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 Labor 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.

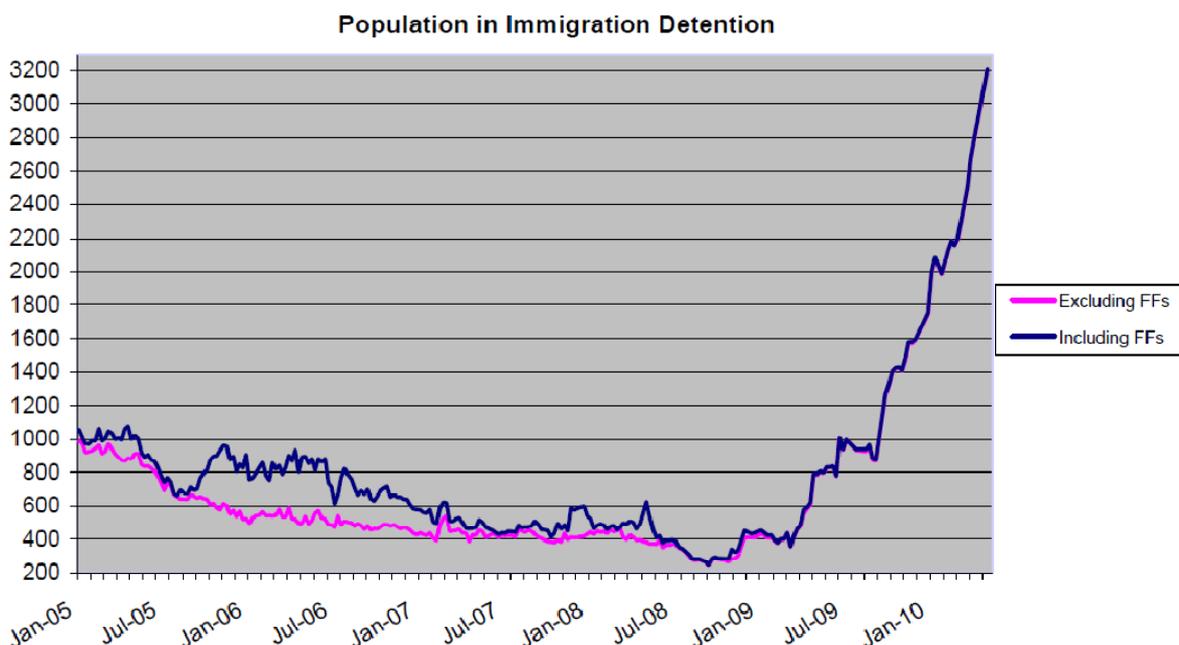
The impact of this unprecedented rate of arrivals under the Labor Government's failed policies has overwhelmed our detention network.

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 \$1.1 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. Prior to the election, the Government announced a further \$98 million would be required for capital improvements to detention centres.

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

As at July 2010, more than 1500 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

As at 20 July 2010, more than 4,000 people, including 561 children are being detained as a result of the Labor Government's failed border protection policies.

On 9 April 2010, the Labor 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 Labor Government. Between 9 April 2010 and 21 July 2010, there have been 43 illegal boat arrivals carrying 2091 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 Labor 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 return 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 the Labor Government has done.

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 (IOM), 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 Labor Government's efforts to locate an offshore processing centre on East Timor have been incompetent and lacking in commitment and have resulted in damaging relations with our regional neighbours. The Labor Government's record is 147 boats and more than 7,000 arrivals and a long standing opposition to offshore processing. The so-called East Timor solution will never be achieved by a Labor Government.

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 Labor 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 Labor 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.

3.4 Proof of identity

The Coalition is concerned about the subjective nature of determining the refugee status of asylum seekers who are unable to present identity documentation.

While the Coalition recognises applicants may never have had such documentation, or may have been destroyed against their will or confiscated, there are also cases where such documentation has been deliberately discarded.

However, where an assessor makes a reasonable assessment that an applicant for asylum has discarded their identity documentation deliberately, there will be a presumption against awarding refugee status under Section 91W of the Migration Act – the Minister may draw any reasonable inference unfavourable to the applicant's identity, nationality or citizenship.

The panel appeals process set up by Labor will be abolished and returned to the policy where an applicant may have recourse to an appeal by another case officer, as is the standard practice of the UNHCR.

3.5 Integrity in decision making

Around the world the rate of rejection and acceptance for refugee status determination varies markedly for asylum applications. According to European Commission figures, Iraqis seeking asylum in Europe can face anything from a two percent chance of acceptance to a 71 percent chance, depending on the country in which they apply.

Determination of asylum applications on Christmas Island and on the mainland depend upon a 'balance of probabilities' assessment conducted by our immigration officials.

The Coalition is concerned that protection visa applicants are being waved through the system to clear the increased volume of applications and relieve pressure on overcrowded off shore detention facilities.

While rejection decisions can be appealed by the applicant to a merits review panel established by Labor, there is no process for appealing or testing the veracity of affirmative decisions.

In Government, the Coalition will introduce a system whereby the Minister is not only more involved in the oversight of decisions made on protection claims, but by reserving the right to directly intervene in the decision making process, to provide additional checks and balances within the system.

In relation to the processing of applications made by off-shore entry persons, the Secretary of the Department or his or her delegate will be required to make the final determination of all recommendations made by on site departmental assessors.

The Minister will also be given power under the Migration Act to call-in any assessors' recommendations prior to determination by the Department before making a final determination.

The merit review panel introduced by the current Minister will be abolished and replaced by a merits review to another departmental assessor. This is the system adopted by the UNHCR in their status determination process. No additional right of appeal will be made available to off-shore entry persons than they would be entitled to in Indonesia or any other location where their assessment would be undertaken by the UNHCR.

The Coalition will also abolish Labor's policy of providing free legal advice to applicants appealing their decision.

3.6 A fairer chance for resettlement – offshore applicants first

A Coalition Government would give priority to resettlement of refugees who have made offshore applications to Australia's refugee and humanitarian visa program.

To achieve this goal, a Coalition Government would increase the number of resettlement places made available through the UNHCR for off shore applications each year by 1,500 persons, increasing the overall share of these places as part of the overall program.

While the UNHCR would be free to recommend persons for resettlement, the decision of who is granted resettlement will be a decision of the Australian Government.

The total number of places under the Refugee and Humanitarian program would remain capped at 13,750.

The Coalition will re-introduce our policy, abolished by Labor, to require off shore entry persons to first make an application for permanent residency to countries other than

Australia, before being granted the permission to make application for a protection visa in Australia.

Off Shore entry persons would remain in detention until such time as they have been able to secure resettlement to a third country other than Australia, have voluntarily chosen to return to their country of origin, or are given permission to make an application for an Australian visa and are granted resettlement to Australia.

This provision would enable the Australian Government to ration the number of places made available to off shore entry persons, and protect the primacy of our off shore resettlement program.

3.7 Private refugee sponsorship pilot

The Coalition will pilot the Canadian refugee sponsorship program, to enable groups in Australia to sponsor refugees over and above our regular intake on a fully bonded basis.

The Coalition will consult on the development of a pilot program to introduce bonded private sponsorship of temporary and permanent protection visas for refugees mandated by the UNHCR in overseas camps.

The sponsorship program would be based on the Canadian model. The bond would operate in a way similar to the contributory parent visa program and enable community groups, approved by the government, to provide sponsorship to people assessed as refugees by the UNHCR offshore. The program would not be available to individual sponsors to protect against any abuse of the program and would not be available to persons who entered Australia illegally. All sponsored persons would need to satisfy health, identity and security checks and be approved by the Australian Government.

The program could potentially apply to both temporary and permanent protection visas, with different bond rates for each. The level of bond would be set to ensure the program was self funding, with no net cost to the budget. If the bond was not called upon for the first three years of settlement, it would be returned to the sponsor.

The number of places would be in addition to those established each year for our regular refugee and humanitarian program.

The pilot would be introduced in the first term of Coalition Government with a view to establishing a permanent program in a subsequent term. The private sponsorship program would therefore enable Australia to lift our refugee intake to 15,000 within three years.

ENDS