

Dear Senator Keneally,

At various times over the last few years I've emailed you on the subject of the asylum-seekers detained on Nauru and Manus Island.

I have thought it might be worth contacting you on this subject because before you re-entered politics you wrote several articles in *The Guardian* critical of Labor's acquiescence in the Government's actions:

<https://www.theguardian.com/commentisfree/2015/feb/26/labor-policy-damaged-children-its-time-they-owned-up-to-it>

<https://www.theguardian.com/commentisfree/2015/jul/28/how-can-i-get-my-head-and-heart-around-labors-policy-on-boat-turnbacks>

<https://www.theguardian.com/commentisfree/2016/aug/10/australia-fails-the-same-lesson-every-time-the-nauru-files-show-how-secrecy-hides-abuse>

I believe that an ALP government should **contact all the people who were at any time detained on Manus or Nauru**, including those who have gone to "third countries" and those who are now detained in Australia, **and take proper steps to ensure their welfare**. If they are still detained, they should be released. If their refugee applications were rejected, they should be allowed to appeal. If they were or are judged to be genuine refugees, they should be helped to settle in Australia, if they still want to do so, or helped to settle elsewhere if they prefer. They should be rehabilitated and compensated.

I want the Parliamentary leadership to announce this policy as soon as possible (or at least the sentence in bold).

The Government will say that the boats will restart and people will drown. You will want to answer this line of attack, but **whether you can devise an effective answer or not** you should repair the damage done to the people who were detained in Manus and Nauru.

A response to the "drownings" attack could include these points:

(1) An ALP government will **withdraw Australia from the 1951 Convention** and negotiate agreements with Indonesia and other countries in the region, and will no longer consider refugee applications from people who arrive by boat or plane (only from people applying while outside Australia).

(2) Anyone who applies after coming by boat or plane or other means will be sent back or detained, unless the Immigration minister exercises discretion in their favour.

(3) People who have already come by plane and applied for refugee status will be detained until their applications have been decided, unless they decide to leave this country.

Point (2) might lead to the indefinite detention of another set of people, but this would be better than the indefinite continued mistreatment of the Manus and Nauru detainees – they have "done their time" for what was never a crime.

In appendices I attach three documents.

The first is a message Senator Seselja forwarded on my behalf to Malcolm Turnbull (Seselja told me that Turnbull had said he would answer my message, but he did not). It is a criticism of the ethics of the Turnbull policy.

The second is a message then Senator David Smith agreed to pass to Mr Shorten, on the likely political cost to the ALP of adopting a more humane policy.

The third is a message I asked Senator Sinodinos and then Senator Molan, after conversations I had with them, to pass to Mr Morrison.

Best wishes,

John Kilcullen
28 February 2020

APPENDIX 1: MESSAGE TO MR TURNBULL.

Dear Mr Turnbull,

We are writing about the Manus and Nauru detainees, to propose that you announce an **end-date** to their detention. We met recently [20 Feb. 2018] with Senator Seselja, who has kindly agreed to forward our message to you. We are both politically active members of the Labor Party. [other person's name and details]. John Kilcullen is a retired Macquarie University [academic](#) in philosophy and politics.

We urge you to give the detainees (or [former](#) detainees) a **definite end-date**, i.e. to make a public promise **now** that by a certain date in the **not too distant future** they will no longer be in PNG or Nauru (unless they freely choose to stay), but in some country where they can make a living and live safely with their human rights respected.

You would meanwhile continue to look for third-country settlement, but you would have set a deadline. If by that date no other country can be found some of them may come to Australia. You might leave this implication unspoken, but it would be better to acknowledge it. You should promise former detainees adequate support while they wait and ask them to cooperate with PNG and Nauruan authorities. There should be an end to the incidental cruelties that happen now (see [here](#), [here](#), [here](#), [here](#)).

The deal first offered to you by [Heather Higginbottom](#) and reluctantly confirmed by Mr Trump, even if it holds, does not guarantee settlement for all detainees. There will be a residual group the United States will not take. The process will take a long time to work through, leaving detainees in a state of anxiety about their fate. It also leaves them open to threats and inducements from people who may claim to be able to advance or obstruct their applications. Harsh detention under conditions of such uncertainty results in suicidal behaviour and deaths from suicide (see [Patrick McGorry](#)) Those who do not suicide may suffer severe long-term damage. The longer you delay giving certainty to the detainees the more severe the damage.

Not long after you became Prime Minister you [said](#): “I have the same concerns about the situation of people on Manus and Nauru ... as I think all Australians do”. This turned out not to be true. You have [acknowledged](#) that Australia's treatment of the Manus and Nauru detainees is “harsh... some would say... cruel”—I would say, unjust.

The justification you have offered is charity or love: “We make no apologies for keeping Australia's borders secure. That is stopping the people smuggling, stopping the drownings at sea. Our policy is compassionate, it respects the sovereignty of Australia, and as far as the people at Manus and Nauru are concerned—the people that Kevin Rudd put there, remember that—we have secured an agreement with the United States to enable them to be resettled in the United States and of course we will continue to work on other options, because they can't settle in Australia, because that would simply start the boats again, start the people smuggling again, start the drownings again, and I tell you there is no charity, there is no love, in families drowning at sea. That was the consequence of not maintaining the security of our borders. Now on that note I wish you a very happy Christmas and I'll get back to serving out lunch”, at the Wayside Chapel, December 2016. (My transcription from a webpage no longer

available, <http://www.msn.com/en-nz?refurl=%2fen-nz%2fnews%2fnational%2fmalcolm-turnbull-discusses-asylum-seeker-policies-during-wayside-visit%2fvp-BBxxt3w>)

This is a travesty of Christian reasoning. Imagine the Good Samaritan saying: “These risky journeys from Jerusalem to Jericho must stop. Let us detain survivors and make sure they never get to Jericho. There is no charity, no love, in letting people fall into the hands of robbers”.

Indefinite or long-term detention under harsh conditions of a particular set of people is *not* the only way of stopping the boats, and *even if it were* it would not be just to the people made an example of. I have studied and taught political philosophy and ethics all my working life and I know of only one version of ethics that might support your argument, namely Bentham’s version of Utilitarianism, “the greatest good of the greatest number” (Andrew Leigh invokes this slogan to justify the Labor Party’s support of offshore detention, <http://www.andrewleigh.com/5944>). The Benthamite adds up the benefits and harms to the various people affected and does whatever produces the greatest net good. People who study ethics generally agree that Bentham’s version of Utilitarianism is not a tenable analysis of morality. It has no place for principles, it ignores the [distinction between persons](#), and consequently has no place for individual rights and no concept of [justice](#). According to [Waleed Aly](#), “the utilitarian politics behind our brutal asylum seeker policy strikes at the heart of our civilisation”; in my opinion this is not an exaggeration.

You say “of course we will continue to work on other options” besides America. Setting an end-date will give a limited time to do that. Maybe New Zealand will take a few, perhaps some other countries may (it might be worth trying to negotiate with European countries for a swap), but when the time runs out the rest will be brought to Australia. For some time now there has been significant support for bringing them here. For example, in a [Morgan Poll](#) taken on 17-19 Feb. 2017 people were asked: “**Do you think asylum-seekers on Manus Island and Nauru should be brought here to Australia or not?**” Sixty-eight percent of Labor voters answered Yes, as did 23% of L-NP voters. (Clearly, to win the next election you need to increase your appeal to people currently intending to vote Labor.) Other opinion polls during the 2016 election ([here](#), and [here](#)) also showed that many voters think that “harsh” treatment of detainees should cease. There is very widespread support for humane treatment among Church groups and others; see [here](#) and [here](#). If you give a lead in this matter many people will strongly support you.

Your general political position is such that you may not feel free to change direction in this matter. In [another message](#) I offer some suggestions for a general reset.

Yours faithfully,

John Kilcullen

[Message from other person not included]

APPENDIX 2: MESSAGE TO MR SHORTEN

Senator David Smith
Parliament House.

Dear David,

Re the Manus and Nauru detainees.

I would like Mr Shorten to make two statements:

(1) That by a certain date in the not too distant future the people detained in PNG and Nauru will no longer be in those places (unless they freely choose to stay), but in some country where they can make a living and live safely with their human rights respected; if no third country settlement can be found by that date, the remaining former detainees will come to Australia.

This would give the Australian government a limited time to make one last effort to find third-country settlement, but it would immediately remove the uncertainty that drives detainees to depression and suicide.

(Technically offshore detention ended long ago, <http://www.naurugov.nr/government-information-office/media-release/no-more-detention-for-nauru-asylum-seekers.aspx>. Nauru detainees can roam the island, PNG detainees can live anywhere they like in PNG. But in reality they are still in detention without any end in sight.)

The second statement is this:

(2) That a Labor government will exit the 1951 Convention and negotiate a new agreement on refugees, asylum-seekers and migrants with Indonesia and other countries in our region.

(On exiting the Convention see <http://www.unhcr.org/4d934f5f9.pdf>, art.45.)

Many of the contortions of Australian policy under Howard and since seem to be an attempt to evade the 1951 convention while pretending to observe it. It would be better to exit from it and deal with the problems in an honest way. Regional solutions are needed, and the fact that Australia has signed up to the 1951 Convention while important countries in the region have not is an obstacle to cooperation. Australia should get together with its neighbours and work out a common approach (cf. https://en.wikipedia.org/wiki/Comprehensive_Plan_of_Action).

A new regional agreement must secure the right to work, which according to the UN Declaration is a human right, art. 23(1), <http://www.un.org/en/universal-declaration-human-rights/>. Denial of this right compels displaced people to move on, <https://www.amnesty.org/en/documents/ASA28/010/2010/en/>. It is obviously better for refugees/migrants to work for their living than to depend on handouts.

People in refugee camps feel insecure because their support may be cut off; that is one reason why they move. A World Food Program announcement that food would run out triggered the 2015 stampede to Europe (https://en.wikipedia.org/wiki/Death_of_Alan_Kurdi). See <https://www.wfp.org/news/news-release/wfp-forced-make-deeper-cuts-food-assistance-syrian-refugees-due-lack-funding>

These two statements would be “captain’s calls”, but so were Ms Gillard’s decision to reopen Nauru and Mr Rudd’s decree that certain detainees would never come to Australia.

Both statements are in line with recent statements by Mr Dutton, which might make it somewhat more difficult for the Government to run a scare campaign. Dutton does not believe that there are any other countries likely to provide settlement for the Manus-Nauru detainees, and he thinks Australia should withdraw from the 1951 Convention.

“We continue to talk to third countries, but let me tell you, there are very few prospects, if any, on the horizon” <https://www.reuters.com/article/us-australia-asylum/australia-says-hundreds-likely-to-languish-in-pacific-camps-idUSKBN1I80LP>

“I think there is a need for like-minded countries to look at whether a convention designed decades ago is relevant today.” <https://www.theguardian.com/world/2018/apr/07/peter-dutton-says-like-minded-countries-should-rethink-un-refugee-convention>

However, Mr Shorten and other Labor MPs have consistently **rejected** the suggestion to set an end-date to offshore detention. I have gathered some of these statements on a webpage, <http://members.iinet.net.au/~akilcull@homemail.com.au/Detention.html> (together with a justificatory statement by Mr Turnbull and my critique). The Labor leaders’ statements include an interview with Mr Shorten on Radio National, 31 July 2018, and a statement by Mr Albanese, 10 July. In these statements it is taken as beyond question that none of these people will ever come to Australia. Therefore no date can be given, because no one can say how long it will take to find third-country settlements (though according to Mr Marles on 29 April, “there are enormous opportunities to find arrangements with third countries ... It wouldn’t require much wit”—it would be easy but we can’t say how long it might take). Please read the webpage and be reminded of what the Party’s spokespersons have been saying, always following the same script. They need to say something very different.

Labor’s leaders deplore indefinite detention. (Shorten: “I do not believe that indefinite detention should be the case.”) “Indefinite” detention means detention without an end date. Someone sentenced for a serious crime to ten years with a non-parole of eight knows when at the latest their detention will end. Australia’s offshore detainees—who have never been accused or convicted of any crime and are not a danger to anyone—don’t know when or whether their detention will end. Not having a known end is what indefinite means. Politicians whose position clearly implies indefinite detention can’t deplore indefinite detention. “Never, ever will they come here”, plus “We can’t say when they will go elsewhere”, equals indefinite detention.

Mr Shorten should announce an end date, setting a deadline for finding third country settlement, acknowledging that if settlements can't be found by that date, then the remaining detainees must, after all, come to Australia.

Political considerations

Would this be political suicide? Imagine a voter who, at present, intends to vote Labor, but if Labor brought the remaining detainees here would switch to LNP or PHON. This voter agrees with Labor's position on a range of other issues (so at present intends to vote Labor), and currently believes that on this issue Labor will never change, but, if it did, would switch to the other side. Keeping the detainees out matters to that voter more than the other issues put together—"Labor is better on ... W,X,Y, but if they add Z (they never will!), I'll vote PHON and preference LNP over Labor". How many such voters would there be? I would say: very few. Anyone who feels so strongly against bringing the detainees here won't feel confident that Labor won't change and will already be voting Coalition.

On the other hand, there is another set of voters, those who currently intend to vote LNP but would switch to Labor if Labor adopted a humane policy on refugees. It is hard to estimate how many of them there may be. In the poll mentioned below, almost a quarter of LNP respondents favoured "bring them here".

And there is a third set of voters, Greens voters and disillusioned Labor voters who will not give a preference to Labor as long as it holds its present position on the Manus and Nauru detainees. In the Senate election voters no longer have to express a whole range of preferences. Labor Senate candidates will not get Greens preferences. Disillusioned Labor voters may cast an informal vote. In elections for the House of Representatives votes without preferences are informal, but in all but a few seats (those in which Greens candidates have a chance) Greens voters will vote informal rather than vote for either of the major parties. Mr Beazley looked like a winner before Tampa but lost because there was a spike in informal voting—many people who usually voted Labor could not bring themselves to vote Labor in that election because of Beazley's capitulation on this matter. See Nicholas Stuart, <http://members.iinet.net.au/~akilcull@homemail.com.au/NicStuartInformalVoting.html>.

Public opinion polls don't generally give information about what would cause voters to switch, they merely provide a picture of how they would vote if an election were held today; but a few polls do give information about what voters think (though still not about what might make them switch). In a Morgan Poll on 17-19 Feb. 2017 the sample was asked: **"Do you think asylum-seekers on Manus Island and Nauru should be brought here to Australia or not?"**

<http://www.roymorgan.com/findings/7159-asylum-seekers-nauru-manus-island-february-2017-201702222052>

Sixty-eight percent of Labor voters answered Yes. Thus the Labor leadership's position was out-of-step with the views of two thirds of Labor voters.

Some relevant polls taken at the time of the last election:

<http://www.abc.net.au/news/2016-06-09/election-2016-vote-compass-asylum-seekers-immigration/7493064>

<https://www.theguardian.com/australia-news/2016/jun/29/majority-of-australians-say-refugees-who-arrive-by-boat-should-be-let-in-poll-finds>

On 3 May 2018 a Sky News ReachTel poll found that “Half of all Australian voters support a 90-day limit on holding asylum seekers in offshore detention on Manus Island and Nauru. Just 30 per cent of people were against the idea.... Support and disapproval levels for the 90-day limit were the same across Coalition and Labor voters”.

<http://www.dailymail.co.uk/wires/aap/article-5684929/Voters-limits-offshore-detention.html>

Though the electoral costs either way are probably not high, the Labor leaders’ present position does carry **heavy longer-term political costs**. The fact that Labor Parliamentarians are so much out of step with the views of Labor party members and Labor voters on a humanitarian issue of major importance makes the Parliamentary Labor party’s claim to stand for humane values (fairness, equality, human rights, compassion, generosity, etc.) sound hypocritical. The result of the Labor-LNP “unity ticket” on Manus-Nauru will be increased contempt for politicians, disillusionment with politics, further hollowing-out of political parties, and loss of faith in democracy. Both of the major political parties refuse in this area to implement values many ethically concerned Australians support, and a vote for a minor party can have no effect.

The fate of the Manus and Nauru detainees will, and should, be a major topic at the Party’s National Conference. Whatever the outcome at the Conference, the Government will be able to run a scare campaign. If Mr Shorten sticks to his present position, and perhaps even defeats opponents (perhaps with the support of some big union), that will not be enough to convince voters who say “Never” that a future Labor government won’t eventually bring the detainees here. The spectacle of division at the Conference will make them think that sooner or later Labor’s position will change. Those who say “Never” to the refugees will never vote Labor.

Best wishes,

John Kilcullen
5 August 2018

APPENDIX 3: MESSAGE TO MR MORRISON

Dear Mr Morrison,

I believe you will already recognise the matters I address below as problems you need to solve, so I don't argue that they are, I just suggest possible solutions.

My suggestions are consistent with Liberal Party values (and my own). I am a member of the ALP, but you are in government, so I'm making suggestions to you. You might think it worthwhile to consider them, because you will want to appeal to voters in the middle of the political spectrum.

Some suggestions

(1) I suggest you announce

- that **Australia will exit** the 1951 [Refugee Convention](#) (see art.44—a year's notice is required) and
- that Australia will begin immediately to negotiate a multilateral agreement, or a set of bilateral agreements, with neighbouring countries regarding asylum-seekers, refugees and migrants.

To quote Mr Dutton: "I think there is a need for like-minded countries to look at whether a convention designed decades ago is relevant today."

<https://www.theguardian.com/world/2018/apr/07/peter-dutton-says-like-minded-countries-should-rethink-un-refugee-convention> (The relevant criterion is not like-mindedness, but geographical proximity.)

The 1951 Convention is the root of many problems. The fact that Australia is a signatory, while Indonesia and other neighbours are not, impedes regional cooperation. Australia's being the only signatory in the region (except for PNG and Nauru) is also an important "pull factor". The Convention constrains action that can be taken in Australia, and this prompts actions offshore that would otherwise be irrational (e.g. because of expense). The desire to deter boat journeys and prevent people from "gaming" the system leads to harsh, indeed cruel, treatment of asylum-seekers (<http://www.smh.com.au/federal-politics/political-news/malcolm-turnbull-defends-harsh-boats-policy-as-necessary-20140507-zr66s.html>).

When you announce withdrawal from the 1951 Convention, you should also say

- that the people who have been detained for so long on Manus and Nauru, if they are refugees, **will come immediately to Australia** for permanent settlement;
- that any new people who apply for asylum after arrival, whether by boat or plane, may be detained on Christmas Island;
- that your government will take strong action to ensure **more humane treatment** of asylum seekers, refugees, detainees and migrants, including those already in this country—the "legacy case-load" (<https://www.kaldorcentre.unsw.edu.au/publication/legacy-caseload>), detained asylum-seekers, NZ deportations, deportation of families with handicapped children, etc.

(There will be no need to repeal the Medevac legislation: it becomes irrelevant when the detainees are brought here.)

The people who have already been detained offshore for six years for deterrent effect have “done their time”. They can’t decently be left there indefinitely. To quote Mr Dutton again: “We continue to talk to third countries, but let me tell you, there are very few prospects, if any, on the horizon” <https://www.reuters.com/article/us-australia-asylum/australia-says-hundreds-likely-to-languish-in-pacific-camps-idUSKBN1I80LP>

The boats did not start again when the US offered to accept detainees for settlement. If that did not restart the boats, then Australia’s accepting the detainees for settlement will not restart them. But If I’m wrong about that and the boats do start again, you can send the new arrivals to Christmas Island, until the exit from the 1951 Convention has taken effect (after one year).

After that the new detainees could also be brought here (if they are refugees), and your Government could (if this seemed desirable) legislate that (except with the permission of the Immigration minister) **no one already in Australian territory could apply** for asylum or for recognition as a refugee—people could come here as refugees only if recognised as such by the UNHCR in some other country. Others arriving by plane or boat would not be able to seek asylum. This would solve not only to the boat problem but also to the “plane people” problem, <https://www.abc.net.au/radio/programs/am/numbers-of-plane-people-asylum-seekers-have-tripled-since-2014/11226798>. Such legislation becomes possible if Australia exits the 1951 Convention.

Australia should be generous in its “humanitarian intake”, and also in aiding neighbouring countries to support UNHCR processing and in accepting recognised refugees into Australia, in accordance with agreements with neighbouring countries negotiated in place of the 1951 Convention.

[the rest of this [message](#) is omitted]