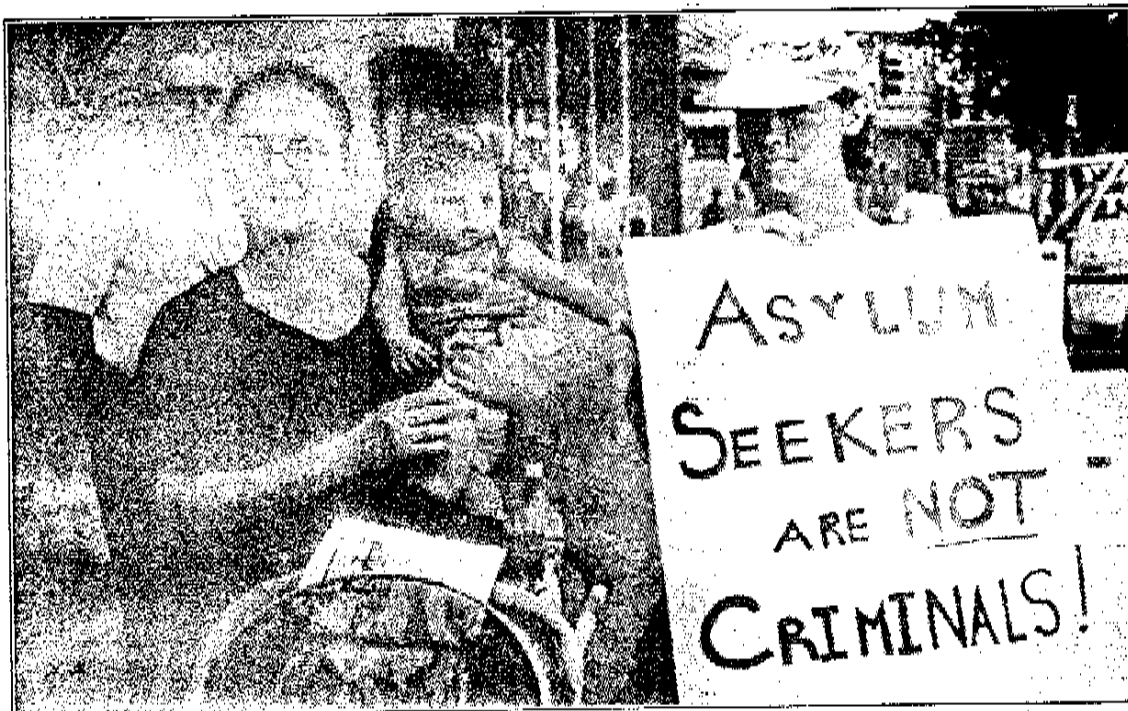


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## Coalition, ALP impose anti-refugee laws



BY SARAH STEPHEN

On September 24, six pieces of legislation were rammed through the Senate after debate was gagged with the support of the Labor Party. A seventh law was still being debated at the close of sitting. The laws will dramatically increase the already punitive denial of rights to asylum seekers who travel to Australia without authorisation. They are a massive attack on human rights.

The new laws are at odds with the central tenet of the 1951 UN refugee convention, which states that signatories "shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, ... enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".

Federal immigration minister Philip Ruddock and the Coalition government continue to assert that Australia has a "proud record" of accepting people in genuine need. An immigration department fact sheet released following the passage of the legislation asserted that, "Australia [has an] absolute commitment to meeting its international obligations under refugee-related conventions".

That is a lie. Last financial year, Australia took just 406 Afghan refugees from offshore. The total offshore refugee and special humanitarian intake was 8261. According to the September 26 *Sydney Morning Herald*, most places went to Europeans.

The main points of the legislation include:

- Mandatory sentencing for people smugglers, with minimum prison terms of five years for a first conviction and eight years for a second conviction;

- The excision of territories, including Christmas Island, Ashmore and Cartier Islands, and the Cocos (Keeling) Islands from Australia's migration zone. Any person arriving on these excised territories, lawfully or unlawfully, will no longer have the right to seek refugee status. People found to be refugees will not be able to apply for an Australian visa unless the immigration department agrees. Alternatively, they can be removed to a third country. Unauthorised arrivals on excised territories can be lawfully detained or removed to a third country;
- A hierarchy of rights for refugees is further entrenched, depending on method of travel and entry to Australia;
- Asylum seekers cannot take legal action against the government in relation to the entry, status, detention and transfer of a person arriving unlawfully;
- The government has been given the authority to prevent the vessels from entering, and to remove them from, Australia's territorial waters if it is deemed the people aboard intend to enter Australia unlawfully. Legal challenges to such forced removals are no longer permitted, backdated to August 27 (to cover the MS Tampa incident). Private, untrained security officers will be able to turn back, board and destroy boats with immunity from civil or criminal proceedings;
- The definition in law of a refugee has been narrowed. The laws include a written definition of persecution. To be recognised as a refugee, a person must face persecution for a reason listed in the refugee convention. This entrenches one of the fundamental weaknesses of the refugee convention — the more widespread the violence and war-like conditions in a country, the less likely is it that a refugee can prove specific persecution under the convention definition, even if their chance of being tortured or killed are still high. According to the Human Rights and Equal Opportunities Commission, under this legislation, German Jews may not have been eligible for refugee status until 1941;
- The conduct by a person awaiting refugees status in Australia shall not be taken into account when determining eligibility for asylum, unless the

minister agrees. This means that Iraqi asylum seekers who campaign in Australia against Saddam Hussein's regime, and whose safety could be jeopardised as a result if they are forced back to Iraq, will not have that activity taken into account;

- Grounds for judicial review are limited to such an extent as to prohibit access to the vast majority of asylum seekers. This includes the prohibition of class actions and a 35-day time limit on appealing to the High Court;

- Under the guise of "protecting asylum processes against fraud", it is now legally sanctioned to assume that those arriving without documentation are seeking to make a fraudulent claim for asylum;

- There is a new requirement that Temporary Protection Visa holders must notify the immigration department within 14 days of changing address, which the Refugee Council interprets as an attempt to "catch people out" and thus to cancel their visas, send refugees back into detention and then deny them the possibility of applying for permanent residence.

On September 27, Ruddock claimed that the new legislation "will send a strong message to people smugglers and their clients that Australia is not a soft touch and that the government will continue to demonstrate leadership in protecting our borders."

But according to William Maley, chair of the Refugee Council, "There is no evidence that deterrence actually works. The truth is, those being smuggled don't know about 'Migration Zones', and those who run the networks are unlikely to care. Setting up categories of 'second class' and 'third class' refugees will not deter refugees from seeking protection from persecution: it will simply make life a burden for people who have already suffered."

At a September 10 press conference, Ruddock explained that the new laws meant that refugees can no longer "land on Christmas Island and see it as a taxi rank to be brought automatically to Australia" and "have the opportunity to have their claims considered first by the department, second by the Refugee Review Tribunal and then to enter into the judicial

review process which they are doing right now."

[Information in this article was gathered from a Human Rights and Equal Opportunity Commission Briefing Paper, a Refugee and Immi-

gration Legal Centre (Victoria) position paper, Amnesty International, press statements issued by the Refugee Council and a Department of Immigration and Multicultural Affairs fact sheet.] =

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