

# Australian opposition party unveils unconstitutional plan to reject refugees

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In clear violation of the Australian Constitution, which specifies that all federal government decisions can be challenged in the High Court, the Liberal-National Coalition last week unveiled a move to end all appeals to the courts by asylum seekers.

This marks a new step in the flouting of fundamental democratic and legal rights that has increasingly dominated the election campaign's reactionary bidding war between the major parties to produce the most draconian refugee policy.

Opposition leader Tony Abbott said he would introduce a “non-statutory” regime for deciding the fate of refugees—that is, a system outside the Migration Act or any other law. He provided no details. Nevertheless, in effect, the Coalition is proposing to abrogate the rule of law, and reject and deport asylum seekers purely by ministerial decree.

Abbott's plan involves handing individual government officials absolute power to decide refugee applications, with no appeals whatsoever. It means stripping all refugees, including the 32,000 who are currently languishing in detention or “community detention” within Australia, of any right of review, including by a tribunal or court.

This contempt for legality, including the most elementary protections against arbitrary rule provided by the 1901 Constitution, has far-reaching implications. The opposition's lawless policy—to remove asylum seekers from the legal system altogether—would set a precedent that goes far beyond refugees.

By flouting the Constitution, the Coalition is giving voice to a wider sentiment in ruling circles: that the constraints of legality and democratic rights have become an intolerable obstacle to the regressive, anti-working class agenda of the corporate elite.

Abbott's regime would defy High Court rulings striking down previous such attempts to block all legal appeals. In

2003, the High Court, Australia's supreme court, stymied legislation introduced by the Howard Coalition government—backed by the Labor Party—to bar refugees' access to the courts.

Unlike the US Constitution, the Australian Constitution has no bill of rights whatsoever. Nevertheless, it does contain a right to seek review by the High Court of any federal government decision. If that right is extinguished, there is no legal scrutiny of government power—one of the attributes of a police-state. Although the High Court timidly declined to rule Howard's legislation invalid, it said it would be unconstitutional to explicitly bar access to the High Court.

Any “non-statutory” scheme would also defy two more recent High Court rulings. In 2010, the court declared unlawful a Labor government attempt to exercise “non-statutory” executive power and block all legal appeals by detainees on Christmas Island, an offshore Australian territory. The following year, the court overturned Labor's “Malaysian solution” of consigning refugees to Malaysia without any guarantees of legal and human rights recognised in domestic and international law.

Asked at a media conference if his policy would withstand a High Court test, Abbott claimed that he was restoring a Howard-era approach that, he understood, had survived legal challenges. In reality, Howard's 2003 rebuff is well known throughout the political, media and legal establishment. Yet no journalist objected to Abbott's outright lie, and not one media editorial opposed it either.

Abbott's scheme has not come out of thin air. It takes to a new level the Labor government's own lawlessness. The Coalition is building on the precedent set by Labor's unlawful “screening out” process of arbitrarily sending back asylum seekers without even considering their refugee applications. Already, more than 1,000 Sri Lankan refugees have been removed on this basis in

recent months.

Earlier this year, Labor also “excised” the entire Australian continent from the migration zone as defined by the Migration Act—another means of seeking to exclude all asylum seekers from the legal system.

Then, last month, reinstalled Prime Minister Kevin Rudd flouted the international Refugee Convention and domestic law to unveil a regime of forcibly transporting all new arrivals to be detained in Papua New Guinea (PNG) or Nauru, where there are no formal guarantees of fundamental legal and human rights. He insisted that they would not come to Australia even if recognised as refugees but would be settled in PNG.

Now Abbott has sought to outdo Rudd by vowing that no asylum seeker would ever obtain permanent settlement in Australia. Even if officially classified as refugees, they would be confined to three-year temporary protection visas (TPVs), leaving them in a state of legal limbo, unable to build a new life. In addition, they would be subjected to “work for the dole”—a form of forced labour for poverty-line welfare benefits.

Refugees on TPVs would be denied the right to reunite with their family, or even to leave the country to visit them. Under the Howard government, this provision caused scores of deaths. Women and children perished at sea trying to reach Australia and reunite with their husbands and fathers, having been legally blocked from living together as a family.

Outlining the new policy, shadow immigration minister Scott Morrison expressed the underlying contempt of both major parties for the courts and legality. He denounced the fact that, as a result of asylum seekers exercising their right of legal appeal, 90 percent of them were eventually successful in securing official refugee status. He claimed that the courts were being “gamed and used and promoted” by “people smugglers” to “put people on boats.” In other words, the courts are to blame for upholding the law.

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Morrison’s allegation also underscores the callous indifference of the capitalist parties toward the plight of innocent people fleeing war, oppression and impoverishment. Like the Rudd government, whose leading ministers have declared that most asylum seekers are just “economic migrants,” the Coalition is outraged that tribunals and courts have ruled to the contrary.

Not accidentally, Abbott mimicked former Prime Minister John Howard in announcing the new policy.

“This is our country, and we determine who comes here,” he declared, reprising Howard’s nationalist slogan: “We will decide who comes to this country and the circumstances in which they come.”

Howard made his declaration in 2001 after mobilising Special Air Services (SAS) troops to bar entry to a Norwegian freighter, the Tampa, carrying 433 rescued refugees, and forcibly transporting the refugees to Nauru. That notorious act became a turning point in official Australian politics after the Labor Party, then led by Kim Beazley, gave it bipartisan support in the lead-up to the 2001 election.

In 2001, Howard deliberately flouted the law by deploying the military, in order to by-pass the Migration Act. By the time that an appeal on behalf of the Tampa refugees got to the courts, they had been removed from the Australian legal jurisdiction, preventing any challenge.

Labor’s own trampling over basic legal rights was further displayed this week when Rudd likewise vowed to proceed with his government’s “PNG solution” regardless of a High Court challenge by an Iranian refugee incarcerated on Manus Island. Rudd brushed off the court case, saying, “we have exactly the right policy message on this and exactly the right administration to back it up.”

The ongoing anti-refugee campaign is a diversion from the real issues—of war, austerity and authoritarian rule—that face working people under conditions of deepening global economic crisis. More than that, it is a warning of the anti-democratic measures being prepared, not just against defenceless refugees, but against the working class as a whole, as the corporate elite deepens its assault on jobs, wages, working conditions and social services.



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