

Australian government seeks to lift bar on deporting refugees to face torture

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Following directly in the footsteps of the previous Labor government, the Liberal-National Coalition government of Prime Minister Tony Abbott is seeking to lift the threshold under which asylum seekers can be deported from Australia to face torture.

The government's proposed legislation illustrates the increasingly lawless drive by both Coalition and Labor governments to overturn fundamental democratic rights and precepts of international law in order to try to stop refugees arriving or staying in Australia.

The bill seeks to overturn a recent Federal Court ruling that declared unlawful a measure adopted by the Labor government to make it possible to expel asylum seekers even if they face a distinct risk of being tortured as a result.

The measure flies in the face of two international treaties, to which Australia is a signatory, that absolutely prohibit torture, under any circumstances, and forbid governments from removing, rendering or "refouling" anyone to face torture—the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR).

At present, as reiterated by the Federal Court, asylum seekers cannot be deported if they face a "real chance"—greater than 10 percent—of being tortured. The government wants to lift this threshold to 50 percent.

In order to avoid deportation, refugees would have to prove that they have a greater than one in two probability of being tortured or killed in their country of origin.

This shift is a further measure intended to intimidate any refugees from exercising their basic legal and democratic right, enshrined in international law, to seek asylum in Australia.

At present, the bill would not apply to the narrower

test of whether an asylum seeker qualifies for a protection visa under the international Refugee Convention. The test of refugee status has also been interpreted by the courts as outlawing the removal of anyone confronting more than a 10 percent chance of persecution.

Nevertheless, the legislation would set a precedent for taking the next step and applying the 50 percent threshold to the refugee persecution test as well.

Underscoring the bipartisan character of this agenda, it was revealed during a Federal Court case last year that the Labor government established a "departmental policy" of testing claims under the CAT or ICCPR under the higher threshold of 50 percent. The court blocked Labor's attempt to deport an Afghan asylum seeker because that policy violated the "real chance" test of 10 percent.

The Abbott government's move to overturn that ruling is another expression of the contempt of the entire Australian political establishment toward basic legal and democratic rights. It comes on top of Labor's criminal policy of consigning refugees to indefinite detention on Nauru and Papua New Guinea's Manus Island, and the current government's military Operation Sovereign Borders to push refugees back to Indonesia or hand them directly over to the Sri Lankan navy.

The Abbott government is also seeking to overturn another court ruling in order to assume unfettered power to reject every protection visa application. Under proposed regulations, Immigration and Border Protection Minister Scott Morrison could reject refugees under a sweeping "national interest" test.

Visas could be denied on the grounds of supposedly encouraging "people smuggling"—the label that successive governments have attached to refugee

voyages. Other criteria are impacting “negatively on Australia’s international relationships with partner nations” and eroding “the community’s confidence in the effective and orderly management of Australia’s migration program.”

Technically, Morrison would have a discretion to grant a visa. In effect, however, the criteria would establish a blanket ban on granting permanent protection visas to anyone who arrived by boat, supposedly “illegally.” This is another violation of the Refugee Convention, which insists that refugees have a lawful right to claim asylum in any country, regardless of how they arrive.

The “national interest” measure seeks to sidestep a High Court ruling last month, striking down the government’s attempt to place an arbitrary cap on the number of protection visas issued each year. The new test also defies two votes by the Senate to disallow the government’s attempts to re-introduce Temporary Protection Visas, which were initially introduced by the former Howard Coalition government.

A number of other anti-refugee measures are proposed. One would effectively scrap the ability of refugees to claim asylum in order to reunite with family members already granted entry into Australia as refugees. Another would allow the government to refuse asylum to anyone who fails to provide documentary evidence of their identity and nationality, or supplies fake documents. By definition, refugees are often compelled to flee without genuine identity papers because they face persecution.

The response of Labor and the Greens to the latest measures has been utterly cynical. Labor’s immigration spokesman Richard Marles said the government was throwing out “the humanitarian handbook.” Labor used the phony “humanitarian” pretext of preventing refugees from drowning at sea in order to institute indefinite detention on Nauru and Manus Island.

Greens senator Sarah Hanson Young accused the government of wanting to “deport more refugees back home to danger.” Yet the Greens propped up the minority Labor government as it expelled more than 1,000 Sri Lankan asylum seekers, and support the underlying “border protection” framework that denies the right of refugees, and other working people, to live in Australia.



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