

# THE MALAYSIA SOLUTION:

IF YOU CAN'T BEAT THEM...COPY THEM.

NATHAN HUYNH

*Note: At the time of writing, the validity of the Gillard Government's Malaysia deal was still an issue for determination for the Full High Court.*

Looking back on Australian Politics in relation to the issue of migration in recent years, I feel like I'm experiencing déjà vu. Back in 2001, in response to the Tampa affair, and the subsequent case of *Ruddock v Vadarlis* [2001] FCA 1329 the Howard Government implemented what is commonly referred to as the 'Pacific Solution'. This solution entailed preventing refugees from landing on Mainland Australia, and instead, intercepting boats and transferring them to offshore detention centres like the infamous detention centre in Nauru. At the time of the implementation, the policy had bi-partisan support. However, after his victory in the 2007 Federal Election, the then Prime Minister Kevin

Rudd abolished the Pacific Solution and closed the detention centres on Nauru, Christmas Island and Manus Island.

Just over three years later, we see a complete backflip of the situation in 2007. In the time that Kevin Rudd was Prime Minister, the number of asylum seekers escalated. The Coalition was able to use this to their political advantage, highlighting that Labor's immigration policy was simply ineffective.

We now have a new Prime Minister, and an opposition leader who has successfully used the issue of asylum seekers to his political advantage. The issue of asylum seekers has become as widely debated and discussed as it was during the time of the Tampa incident, and Prime Minister Julia Gillard is faced with the challenge of dealing

with the issue appropriately, or risking losing the political game.

Under pressure from Tony Abbott and his ‘stop the boats’ mantra, the Prime Minister has implemented the ‘Malaysia Solution’. Many would be aware, that Malaysia was not the Prime Minister’s first attempt at implementing a regional solution. Initially the Prime Minister prematurely announced her attempts to open a detention centre in East Timor, and after negotiations with various Asia-Pacific nations, ended up forming a deal with Malaysia. My analysis of the Malaysia Solution is that it aims to prevent refugees from landing on mainland Australia, and instead, intercepts boats and transfers them to offshore detention centres. Funnily enough, these are the exact words I have written in my first paragraph regarding the pacific solution. In my opinion, we’re facing what is fundamentally a Howard-era style policy.

Despite being morally wrong, the Government argues that it has the legal right to implement the Malaysia Solution. The Government has argued that it had strictly followed the Migration Act, and that it had the power to declare a third country to designate asylum seekers to be sent there. However, at the time of writing, the High Court has blocked the Federal Government’s Malaysia Solution, and as a consequence, all migrant transfers to Malaysia have been halted, pending a Full Court Hearing.

The High Court will consider whether the human rights protections of the Malaysian Law are sufficient enough to protect asylum seekers. Two other issues challenged, are the ability of the Government to expel asylum seekers without adequately reviewing their circumstances, and the transferring of minors unaccompanied by parents and guardians.



Detainees in an overcrowded cell in the KLIA Immigration Depot, Malaysia



Male detainees showing their identity cards.

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## **IF THE HIGH COURT CHOOSES TO DECLARE THE MALAYSIAN SOLUTION AS INVALID, THEN IN MY OPINION, ALL AUSTRALIA HAS DONE IS WASTED A LOT OF TIME, EFFORT AND MONEY.**

Many might think that the end of the Malaysian Solution signifies the end of the off-shore processing of refugees. However, the Papua New Guinean government has recently announced its support for the detainment of asylum seekers on Manus Island, which is part of the Papua New Guinea. The Prime Minister has also announced her support for the plan, and has claimed that the Government's initial intention has been to open regional processing centres in both Malaysia and Papua New Guinea, and that a regional processing centre in Papua New Guinea does not signify the end of off shore processing.

I know I've made this a recurring theme; however once again, I feel a sense of déjà vu. When I first heard about the potential regional centre at Manus Island, I thought to myself, that name sounded familiar. Then I realised that I mentioned it in my opening paragraph. Manus Island was part of the Pacific Solution – the solution that Julia Gillard and the Labor Party once so heavily criticised. Personally, I saw the Malaysian Solution as a near-identical solution

to the Howard government's Pacific Solution, with the only major difference being the location. However, with the announcement of the Papua New Guinean government's support for the usage of Manus Island, I see Labor's Immigration Policy as becoming more and more like that of their predecessor's.

It will be interesting to see what ruling the High Court makes. However, I see both conclusions as highly problematic. If the High Court chooses to declare the Malaysian Solution as invalid, then in my opinion, all Australia has done is wasted a lot of time, effort and money. It is my understanding that since the deal has been made, Australia will have to accept the 4000 refugees from Malaysia, regardless of whether Australia processes any of its refugees over to Malaysia. To be blunt, this reflects a failure of planning by the Gillard Government and in my perspective, is an embarrassment to Australia as we have fundamentally dealt with Malaysia's issues without dealing with our own.

## **DESPITE THIS MORAL OBLIGATION, THE GOVERNMENT REFUSES TO EVEN CONSIDER ANY OF THE ... NEW ARRIVALS.**

However, even if the High Court holds the Malaysia Solution as legally valid, I believe the moral implications outweigh any legal validity that can be associated with the solution. I believe that locking up asylum seekers will be highly

detrimental and can ruin the lives of many. The more ethical solution would be to conduct health and security checks, to allow the asylum seekers who pass these tests to live with the community whilst assessing their claims. Even if the Government does not believe that the claims are genuine, I believe it has a moral obligation to at least assess these claims, rather than just sending the refugees to Malaysia.

Despite this moral obligation, the Government refuses to even consider any of the 800 new arrivals. I've always seen Tony Abbott as a strong opposition leader, and he has proven this by continually pressuring the government on the issue of asylum seekers. As a consequence, the Gillard Government is treating asylum seekers as political objects. Like the former Howard Government, it recognises that within the political spectrum, the issue of asylum seekers can invoke high levels of emotions and can significantly influence the result of an election. Thus, it has decided to take a hard lined stance, with the hope that it would win over the support of mainstream Australians.

However, the implementation of this solution hasn't fixed the political woes of the Prime Minister. Opinion polls are still at record lows, and there is growing dissent and discontent towards the policy. I believe that this policy highlights the blatant hypocrisy of Julia Gillard and her government, and highlights how it has neglected both its traditional values and helpless victims, in an attempt to gain a political advantage. An attempt which so far does not seem to be working.



# HIGH COURT DECISION *M70*

JANE McADAM

The High Court's decision in *Plaintiff M70 versus Minister for Immigration and Citizenship [2011] HCA 32* represents a principled analysis of Australia's protection obligations under international refugee and human rights law, albeit within the particular confines of section 198A of the Migration Act 1958 (Cth).

The removal of asylum seekers to another country is only lawful if the receiving State can provide certain effective guarantees, including:

- A** Guarantees that individuals will not be sent to a place where they are at risk of persecution or other forms of serious harm;
- B** Acceptance of responsibility to determine claims to refugee status;
- C** The provision of fair and efficient procedures for the determination of refugee status;
- D** The treatment of asylum seekers and refugees in accordance with generally accepted international human rights and refugee law standards;
- E** Guarantees that asylum seekers and refugees will have subsistence that is sufficient to maintain an adequate standard of living; and
- F** The maintenance of effective protection for refugees until a durable solution can be found.

A country's human rights record will also be relevant, including both procedural and substantive standards. As the High Court observed, such protections for refugees and asylum seekers do not exist in Malaysian law.

For the Australian government, the deterrent value of the Australia–Malaysia Arrangement was premised on Malaysia being perceived by asylum seekers as an inhospitable host country. Indeed, had the partner country been New Zealand, or any other country with a strong human rights record, the deterrent factor would not have existed. Australia's decision to partner with Malaysia *because* of its poor human rights record in relation to the treatment of refugees and asylum seekers was ultimately – and rightly – the reason for the Agreement's downfall as a matter of law.



High Court of Australia, Court 2  
John O'Niell





**INDIGENOUS ISSUES**



FUCK  
THE  
POLICE

Fuck  
you  
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Diogo  
Anthony  
duy's

Tricia  
or  
Allan  
etc

FROM  
VICTIM  
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KIKYA

HELL FIRE





Mural at the entrance to The Block,  
Redfern, New South Wales  
Pimlottc