

CLArion No. 5 – 8 March 2004
email newsletter of Civil Liberties Australia
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DFAT gives opportunity to input into HR issues pre-Commission in Geneva

CLA was invited to join a large group of Australian NGOs for a two-day consultation session with the Department of Foreign Affairs and Trade on 2 and 3 March.

The consultation on international HR issues was in advance of Australia's chairing of the Commission on HR in Geneva from 15 March to 25 April.

Greater importance than usual appeared to be placed on the consultations, which occur with NGOs in Australia about every six months.

The full and frank exchange, conducted under Chatham House rules, allowed DFAT to explain its thinking in relation to the opportunities and issues raised by our first-ever chairing of the CHR.

As well, NGOs were able to establish what their priorities were.

The consultations included DFAT briefings on specific countries of interest where Australia is involved in close and potentially significant dialogue on HR, including China, Vietnam and Iran.

Foreign Minister Alexander Downer attended the briefings for more than an hour.

In an impressive performance, he openly canvassed Australia's position on several contentious issues, and appeared to be genuinely interested in accepting input, comment, fresh ideas and new ways of looking at issues from the viewpoints of NGOs.

From CLA's viewpoint, at this early stage of its re-formed development, the main interest will be a much greater local (in Australia) focus on HR issues during the six-week formal CHR meeting.

However, Australia holds the chair for basically all of 2004, and quiet diplomacy outside the formal CHR meeting may be where we are able to be more influential.

Australia's key aims for this session of the CHR are to improve governance aspects (how well the meetings function) and to encourage greater emphasis on HR issues in the Pacific.

Pacific HR issues are often ignored, because Pacific Island states cannot afford the high cost of representation in Geneva.

- Bill Rowlings, Sec, Civil Liberties Australia

March 2004

Human Rights Commissioner says ACT Rights Act is 'vital step'

Federal Human Rights Commissioner Dr Sev Ozdowski said that the Human Rights Act for the ACT was a vital step in Australia maturing as a society, and valuing and protecting the rights of its people.

Australia needed the strongest possible laws to protect the civil rights of individuals because the reality of Australian culture did not match the myth, he said.

"It is encouraging to see the ACT become the first jurisdiction in Australia to propose a Human Rights Act," he said, speaking in Canberra at a special forum with the board of the ACT's Civil Liberties Australia (CLA) last month.

CLA, the newly-formed human rights and civil liberties organization in the national capital, supports the proposed Human Rights Act for the ACT being championed by Chief Minister Jon Stanhope.

"All other Western democracies that we compare ourselves with already have human rights legislation or legislated protection," Mr Ozdowski said.

"In Australia, our economic and social rights are reasonably well protected, but we need to strengthen civil rights to create a culture where an individual can, for example, advance his or her liberties by challenging bureaucracy, the government of the day, or a decision of private enterprise impacting on his or her life...and not suffer untoward consequences."

Dr Ozdowski said Australians prided themselves on a tradition and culture of rugged individuality.

However, in reality individuals who stood up against the establishment often were ostracised and became the victims of their own honesty and integrity.

"Do you know any whistleblower who has been rewarded and promoted for doing what is essentially their civil or corporate duty?" Dr Ozdowski asked.

"For example, take the nurses at hospitals in Sydney's south. Their life-and-death concerns proved correct, but they have certainly not received any promotion or reward from the system or society for doing what they did.

"We say that we value individualism, but our actions don't always reflect our words. The reality of our culture does not match the myth.

"We need better legislative protection of our freedom."

The forum involving Dr Ozdowski and the CLA identified a number of civil liberty and human rights issues which were likely to grow in importance over the next few years in the national capital.

They included:

Email: who 'owns' emails and their attachments in the public and private sector, and who has the right to use the information contained in them?

The forum was told that provisos varied from firm to firm, and from department to agency, and that there had been little or no testing of whether the supposed corporate 'rules' would stand up in a court of law.

"For example, do you have the right, or are you technically forbidden from, receiving a private email at work if you are employed by the Australian Government?" CLA president Dr Kris Klugman asked.

"Are you entitled to send and receive private emails within your own department, or firm?

"You can have a private physical communication on company premises, but can you have a private electronic conversation?

"How long can companies store emails, and produce them to charge or embarrass an employee? Many emails stay lodged in data storage for years, even when a person believes he or she has deleted them from the email program," Dr Klugman said.

Whistleblowers: It may not be enough to defend whistleblowers, former Industrial Relations Commission judge and CLA member, Mr James Staples, said: we may need to devise a system to reward them when what they have claimed proves true.

"At the moment, any whistleblower suffers hugely because we have a culture which doesn't understand the value of what they are doing for society, or the courage that it takes over a long, long period of time to stand up to abuse and ridicule from 'authority' until they are proved correct," Mr Staples said.

"Whistleblowers who alert us to important governance and administrative issues are national treasures.

"They should be rewarded, rather than pilloried.

"We may need a 'Whistleblower Victim Fund' to compensate such people, to maintain their courage through the public humiliation process they suffer, and to ensure they are rewarded or promoted in their employment, rather than forced to leave or left languishing.

"We need to change the corporate and

societal culture to encourage more people to blow the whistle on improper financial and administrative conduct in our corporations and government departments."

Public servant's 'Right to a Life': Why should public servants have to seek formal permission from a department secretary or agency head if they want to have a second, part-time job, or if they opt to donate their private energies to working for the disadvantaged, or fighting bushfires?

"Just about every government agency in Canberra has a rule that you can't do any 'work' – paid or voluntary – without getting formal approval in advance," Dr Klugman said.

"That's feudal, as if the government owned you and your life 24 hours a day, seven days a week.

"Sure, it's fair and reasonable that you should have an obligation to advise your manager if you're doing something that might create a conflict of interest.

"But a secretary or chief executive officer doesn't, or shouldn't, 'own' you.

"You contract to the government to provide your labour about eight hours a day, five days a week: the other 16 hours a day, and the weekends, should be yours to decide what you want to do when you want to do it.

"Any approval required should be the exception, not the rule," Dr Klugman said.

– *Bill Rowlings*

2 March 2004, Media release by ACT Government 85/04:

HUMAN RIGHTS AT HEART OF A JUST SOCIETY: BILL OF RIGHTS FOR A.C.T.

Chief Minister and Attorney General Jon Stanhope said today (02 March) that the passage of the Human Rights Act by the ACT Legislative Assembly was a historic moment for both the ACT and Australia.

"The ACT Human Rights Act is landmark legislation, establishing Australia's first Bill of Rights.

"The legislative recognition and protection of basic civil and political rights is overdue in Australia. Indeed, Australia is the only Western democracy to not have such protection and I hope other jurisdictions will follow our lead.

"The Human Rights Act will help protect us from the erosion of our human rights and our way of life.

"It is not easy to see small, incremental erosions of rights, such as the abuse of move-on powers, surveillance and the restriction of freedom of speech - we are also seeing threats to our lifestyle and basic rights we all take for granted in the name of community security, the 'war against terrorism' and the fight against crime.

"The Act is a significant step forward for the whole Canberra community; whether you are a person living with a disability, a man or a woman, straight or gay, rich or poor, whatever your ethnic or national origin, political opinion or religious beliefs. "The Human Rights Act also highlights the special significance of human rights to the indigenous peoples of the Territory," said Mr Stanhope.

The Chief Minister said the new laws are based on the International Covenant on Civil and Political Rights (ICCPR), a human rights treaty to which Australia has been a signatory for over 20 years.

"Canberrans deserve to have their basic human rights, such as the right to life, physical well-being and privacy, recognised in law," said Mr Stanhope.

"The Act also recognises the right to protection of the family and children, personal freedoms, participate in public life, be free from forced work, equality before the law and a fair trial."

The Human Rights Act is widely supported by the community.

During the consultation process, there were 49 public forums, including town meetings, seminars, a Deliberative Poll and 145 submissions to the Consultative Committee from members of the public. Approximately 2000 individuals provided comment on the Act.

The Act also establishes the office of Human Rights Commissioner.

"The Human Rights Commissioner will have several functions, namely, to review Territory law, conduct education programs and report to the Attorney General on any matter relating to the Human Rights Act.

"The Human Rights Act will protect our community by recognising basic civil and political rights," Mr Stanhope said.

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New York Times, 14 February 2004

Privacy in Peril (NY Times EDITORIAL)

In an attempt to bolster its defense of the unconstitutional Partial Birth Abortion Act of 2003, the Bush administration has gone beyond its campaign to destroy women's reproductive rights and has attacked the privacy rights of all Americans.

This assault is being conducted through subpoenas the Justice Department has issued demanding that at least six hospitals in New York City, Philadelphia, Illinois and elsewhere turn over hundreds of patient records for certain abortions. This egregious intrusion on patients' privacy is being pursued in the name of defending lawsuits against the abortion ban. Not only is the information not needed to do that, but it is also a flagrant example of why Congress and the attorney general have no business second-guessing sensitive medical decisions made by individuals and their doctors.

Judges in New York and Nebraska have barred the administration from enforcing the abortion law in response to suits brought by groups of doctors, who have argued, correctly, that the ban should be struck down because of imprecise wording and the lack of an exception to protect a woman's health. A narrow Supreme Court majority struck down a state ban in 2000 for omitting a health exception.

Attorney General John Ashcroft says the fishing expedition his department has started is justified to evaluate whether the procedures covered by the law are ever necessary to preserve a woman's health. In a sound ruling last week, a federal judge in Illinois rebuffed this flimsy argument. Citing state and federal law, as well as Supreme Court precedent, the judge, Charles Kocoras, also rejected the Ashcroft team's astonishing claim that no doctor-patient privilege exists under federal law protecting patients from public disclosure of their records.

Unfortunately, the federal judge in New York overseeing one of the legal challenges to the new law does not grasp his duty to protect patient privacy. That judge, Richard Conway Casey of New York's Southern District, has threatened to lift his injunction blocking enforcement of the abortion ban if leading hospitals in New York City and elsewhere fail to produce files on at least several dozen women's abortions.

Underscoring the legally dubious nature of Judge Casey's threat, the hospitals in question are not themselves parties to the lawsuit. Nor, for that matter, are the women whose personal privacy Mr. Ashcroft is so determined to invade. Moreover, as Judge Kocoras aptly noted, redacting a patient's name and identification number from her file neither ends the harm to individuals of having intimate details of their medical history publicly disclosed, nor adequately protects the patients' identities. We applaud those hospitals that are resisting Mr. Ashcroft's privacy invasion, and encourage them to stand firm until the legal proceedings run their course. Meanwhile, Americans should see Mr. Ashcroft's intimidating tactics for the dangerous threat to liberty and privacy they really are. (BR)

Reuters, 15 February 2004 (as reported in the New York Times)

Accord on Philippine HR Inquiry

OSLO, Feb. 14 - The Philippines government and Communist rebels said on Saturday after their first peace talks since 2001 that they would jointly investigate allegations of human rights abuses. Representatives of both sides also agreed at talks in Oslo to meet again in late March. But the rebels said there was no chance for a rapid end to the 35-year-old conflict that has claimed 40,000 lives. The two sides agreed to set up a joint panel, with five members from each side, to investigate alleged human rights violations. The panel could initiate fact-finding missions.

Luis Jalandoni, leader of the rebel National Democratic Front delegation, said the panel had limited powers but its presence might deter abuses. He accused the army of killing two human rights activists Friday in Mindoro Oriental Province.

Mr. Jaladoni said the talks had almost failed because the government was reluctant to put pressure on the United States, the European Union, Canada and Australia to remove groups in the umbrella rebel group from a list of terrorists. "The listing is baseless and malicious," he said. "We are not like Al Qaeda. We are a liberation movement." (JS)

20 February 2004

UNITY, national publication of the United Nations Association of Australia

February 20, 2004 No 370

[3] Phone and 'E-tap' legislation introduced

The Government will move to give law enforcement agencies appropriate telecommunications interception powers to deal with a wider range of terrorism-related offences, Attorney-General Philip Ruddock announced on February 19

The Telecommunications (Interception) Amendment Bill 2004, which takes into account emerging communication technologies, will also allow agencies to obtain warrants to assist in investigating terrorism-related and other serious offences such as cyber crime and dealings in firearms.

Mr Ruddock said amendments to extend the definition of interception to include reading or viewing a communication in its passage over the telecommunications system extend the protections conferred by the Interception Act. The amendments also clarify the application of the Act to communications made using modern telecommunications services.

He said, "The current restriction applies only to listening to, or recording of communications, but change is necessary because of developments in technology and the increasing use of text and image-based telecommunications services, such as e-mail."

The proposed changes specify when it will be necessary to obtain a warrant under the Act to gain access to those communications and when it will be appropriate to rely on another form of lawful access, such as a search warrant. Mr Ruddock said, "In revisiting this issue, the Government has taken on board comments made by the **Senate Legal and Constitutional Legislation Committee** when it considered similar amendments in 2002".

The Bill also will allow ASIO to record calls to its publicly-listed telephone numbers without a warrant to ensure that ASIO is able to maintain accurate recordings of calls to these numbers, to pass on information that is relevant to security.

For more information, call the office of the Attorney-General (02) 6277 7300 website: www.law.gov.au

27 February 2004, New York Times
China grants Tibetan nun early release

By JIM YARDLEY

BEIJING, 26 February 2004— The Chinese government on Thursday released a Tibetan nun who had been a political prisoner for more than 14 years and had become internationally known as one of the "singing nuns" of Drapchi Prison in Tibet, according to a San Francisco-based human rights organization.

The early release of the prisoner, Phuntsog Nyidron, whose sentence was scheduled to end in March 2005, appeared to be a goodwill gesture. John Kamm, executive director of the Dui Hua Foundation, which monitors Chinese human rights cases, said an official with the Chinese Foreign Ministry phoned him on Thursday night with news of the release.

"This is the first significant Chinese gesture on the issue of prison releases in quite some time," said Mr. Kamm, who has been working on the case since 1994. Phuntsog Nyidron is one of 14 Tibetan nuns who had been jailed at the Drapchi Prison in Tibet. Mr. Kamm said that Phuntsog Nyidron is the last of the nuns to be set free. Most served their full sentences; at least one other was granted an early release by the Chinese government.

Phuntsog Nyidron was reportedly arrested in 1989, when she was 24, after she and other nuns held a peaceful demonstration for Tibetan independence. She was reportedly tortured and given a nine-year sentence. But in 1993, a tape of the nuns singing songs praising the Dalai Lama and supporting Tibetan independence was smuggled out of the prison. The tape became a rallying cry for supporters of the Dalai Lama.

27 February 2004, New York Times, from an Associated Press report

House passes Unborn Victims legislation

WASHINGTON -- The US House of Representatives has passed legislation for the third time giving a foetus separate victim's rights in the event of an attack on a pregnant woman.

Passage of the Unborn Victims of Violence Act was hailed by conservative groups as an affirmation of the legal rights of the unborn, but it was condemned by abortion rights groups concerned that the real aim was to weaken women's reproductive choices.

As in 1999 and 2001, when House-passed bills died in the US Senate, it could prove difficult for supporters to overcome parliamentary hurdles raised by senators concerned about abortion rights. President Bush has actively backed the bill in an election year where Democratic contenders John Kerry and John Edwards, are vigorous supporters of abortion rights.

26 February 2004, New York Times

Jeremiah S. Gutman, 80, dies **By THOMAS J. LUECK**

Jeremiah S. Gutman, a founding member of the New York Civil Liberties Union and a fixture of the civil rights bar in Manhattan for 50 years, died yesterday after suffering a heart attack at the Metro-North train station in Hastings-on-Hudson, near where the 80-year-old lived.

In 1951, in part as a response to what he saw as civil rights violations in Senator Joseph McCarthy's campaign to root out Communist influence, Mr. Gutman joined others in founding the New York Civil Liberties Union. He remained a leading figure in that group, a state organization, and was a member of the board of the American Civil Liberties Union at the time of his death.

From UNity, UN Association of Australia e-zine, 27 February 27, 2004 No 371

[7] UNICEF says indigenous children 'most vulnerable'

Indigenous children are among the most vulnerable and marginalised groups in the world and global action is urgently needed to protect their survival and rights, according to a new report from the United Nations Children's Fund (UNICEF). Compared to non-indigenous children, indigenous children generally have lower vaccination rates and higher mortality rates; lower rates of school enrolment; higher rates of school drop-out; and inadequate protection in format justice systems, says the report, produced by UNICEF's research arm - the Innocenti Research Centre in Florence.

In income-rich and income-poor countries alike, infant, child and maternal mortality rates are higher among indigenous groups.

The report, *The Rights of the Indigenous Child*, details how the rights of indigenous children in both rural and urban areas are often compromised or denied. The report is available at: www.unicef.org/ and search for "Innocenti"

From Unity 27 February 2004:

[8] US reports on Australia's HR

The US Government's report on Australia's human rights record examines, largely without comment, Australia's treatment of asylum seekers, refugees and repatriation.

Of other human rights issues in Australia it says the Australian Government generally respected the human rights of its citizens, and the law and judiciary provide effective means of addressing individual instances of abuse; however, there were problems in some areas.

There were occasional reports that police and prison officials abused persons in custody. Human rights organisations, refugee advocacy groups, and opposition politicians continued to express concern about the impact of prolonged mandatory detention on the health and psychological well-being of asylum seekers.

Societal violence and discrimination against women, and discrimination against Aboriginal people also were problems.

Some leaders in the ethnic and immigrant communities and opposition political party members expressed continued concern about instances of vilification of immigrants and minorities. There was ongoing criticism of the 1996 Federal Workplace Relations Act by domestic labour unions and the International Labour Organisation (ILO), particularly in regard to the law's restrictions on multi-enterprise agency bargaining and its emphasis on individual employment contracts. There was some trafficking in women, which the Government was taking steps to address.

The US report is available at: www.state.gov/g/drl/rls/hrrpt/2003/27763.htm

For comment, call Alanna Sherry, Co-ordinator ChilOut tel: 0417 177 530

e-mail: coordinator@chilout.org website: www.chilout.org/

From Unity 27 February 2004:

[9] Canadian judge is new UN Human Rights Commissioner

UN Secretary General Kofi Annan has appointed Canadian judge Louise Arbour as UN High Commissioner for Human Rights, replacing Sergio Vieira de Mello, killed last August in a bomb attack on the UN headquarters in Baghdad.

Justice Arbour, 57, had served as chief prosecutor for international tribunals dealing with war crimes in the former Yugoslav federation and genocide in

Rwanda during the late 1990s. She issued indictments against former Yugoslav President Slobodan Milosevic, who is on trial in The Hague.

The General Assembly is expected to consider and approve the nomination in the near future. Once her nomination is approved by the Assembly, Justice Arbour is expected to retire from the Supreme Court of Canada in late June 2004 to take up her new assignment in Geneva.

In 1996 she had been appointed by the Security Council as Chief Prosecutor for the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, based in The Hague.

Admitted to the Quebec Bar in 1971 and the Bar of Ontario in 1977, she served for 13 years as Associate Professor of Law and later Associate Dean at Osgoode Hall Law School at York University (criminal law, criminal procedure, evidence, and droit civil) and became a member of the bench in December 1987, first as a trial judge on the Supreme Court of Ontario and, in 1990, at the Ontario Court of Appeal.

Until her appointment to the Tribunals, she served as vice-president of the Canadian Civil Liberties Association. She has published extensively, in both English and French, in the fields of human rights, civil liberties, gender issues and criminal procedure.

She was inducted into the International Hall of Fame - International Women's Forum in 2003; the same year she was awarded an Honorary Fellowship at the American College of Trial Lawyers, and won the Médaille de la Faculté de droit de l'Université de Montréal.

Welcoming the appointment, the **Minister for Foreign Affairs, Alexander Downer**, said, "In our capacity as Chair of the Commission on Human Rights for 2004, Australia looks forward to working closely with the new High Commissioner. ...

"Australia attaches great importance to the role of the High Commissioner for Human Rights and to the UN's work in the area of human rights more broadly. The Government continues to work with the Office of the High Commissioner to strengthen the UN human rights machinery – to make it as responsive and effective as possible - building on the success of our diplomatic initiative on treaty body reform."

(Source Press Release SG/A/866 BIO/3558
www.un.org/apps/news/)

For more information, e-mail:
A.Downer.MP@aph.gov.au website:
www.dfat.gov.au

From Unity 27 February 2004:

[10] 'Bring human rights home' campaign

UNAA National President, Margaret Reynolds, writes:

In recent weeks concern has been expressed about Australia chairing the UN Commission on Human Rights in Geneva from March 15 to April 25.

Some human rights advocates have questioned the Australian Government's role because there has been ongoing criticism of official commitment to all human rights conventions, especially those relating to asylum seekers, indigenous peoples and Australia's failure to ratify the Optional Protocol on Torture or the Optional Protocol on the Elimination on Discrimination on Women.

However, it is important to recognise that the United Nations Commission on Human Rights operates as an annual forum where the aim is to educate and monitor human rights standards globally. Certainly the focus is on those countries without any commitment to human rights, but it is also an important opportunity to monitor declining standards in western democracies.

It is also an occasion for human rights advocates to use that six week focus to actively pursue human rights at the domestic level.

UNAA recommends that in Australia we actively pursue a strategy of "*Bringing Human Rights Home*" during the period of March 15-April 25 .

This campaign will be launched on March 12 in Sydney at the Centre of Peace and Conflict Studies, University of Sydney at a forum *Action for Human Rights*.

The "*Bringing Human Rights Home*" campaign will urge Australians to actively adopt a human rights focus for six weeks by logging on to Human Rights websites

www.unchr.org/
www.hrw.org/un/unchr60.htm
www.icmc.net/
www.fidh.org

- By writing to Federal Parliamentarians about specific human rights of concern locally or internationally.
- By conducting formal and informal debates about human rights in Australia, including the need for an Australian Bill of Rights

- By writing letters to the editor of local and national newspapers about human rights issues of concern.
- By phoning talk back radio to get human rights issues discussed
- By asking teachers what human rights education is programmed in schools.
- By finding out how Australian federal, state and local governments comply with human rights standards agreed to by successive governments
- By throwing a neighbourhood party to talk about the way governments avoid fulfilling their duty to respect individuals' human rights.

These are just a few ideas to help us plan for a special six weeks of respecting peoples rights to live according to the Universal Declaration of Human Rights. Human rights touches us all in our daily lives. We should be actively concerned to end human rights abuse in many regions of the world, but we should also be prepared to closely examine how people are treating each other at home, at work, in our schools and child care centres, in aged care homes, prisons and detention centres. Most human rights abuse is committed by the powerful against the weak and that puts a special responsibility on governments to monitor how its institutions are run.

So we have to play our part in monitoring governments' behaviour.

For more information and comment, call Margaret Reynolds, national president United Nations Association of Australia **0418 181 843 e-mail:**

m.reynolds@uq.edu.au or

margaret.reynolds@bigpond.com

HREOC's website www.hreoc.gov.au

From Unity 27 February 2004:

[11] Private Member's Bill of Rights

Greens MP Michael Organ has released an exposure draft of a Bill of Rights to be introduced as a Private Member's Bill in the Federal Parliament later this year.

Mr Organ says, "My Bill aims to confer certain rights and responsibilities on the people and Parliament of Australia. It entrenches within the law the basic rights and freedoms we all hold dear; rights including freedom of speech, public assembly, freedom of religion and legal rights such as the presumption of innocence and equality under the law."

He said there was an obvious need for a Bill of Rights given the government's "abuse of such rights and attacks on civil

liberties and our traditional way of life" and cited, among other issues, "the indefinite detention of children in desert prisons."

For more information, call: Michael Organ MP 0439 442 550

The draft Bill is available at:

www.michaelorgan.org.au

Comments on the Bill by e-mail to

Michael.Organ.MP@aph.gov.au or by telephone on **(02) 4228 3666**.

CLIPPINGS, ADVISORIES

Human rights & mental health in political context of contemporary Australia

Conference with Discussion Forums, held 8 March 2004, NSW Parl House

Speakers included: Dr Carmen Lawrence MHR, Dr Arthur Chesterfield-Evans MLC, Ms Lillian Holt, Mr Craig Sanroque, Dr Eileen Pittaway, Dr Louise Newman, Sen Andrew Bartlett, Ms Lyn Bender, Dr Meredith Burgmann MLC and various experts and survivors.

Topics included: Human Rights and Mental Health, Freedom of Expression and Speech, Rights in the Workplace, Anti-discrimination, Women's Rights, Family and Children's Rights, Torture and Punishment.

Email: Media-Officer@SAVE-Australia.com.au

NAURU claims the 'right' to keep detention centre open

A spokesperson for Nauru has complained over Australian Opposition Leader Mark Latham's statement that a future Labor Government would close the detention centre on the island