

Government's hardline off-shore processing regime faces High Court challenge

Chris Uhlmann 7.30 report ABC 20 August 2013

A court challenge alleging the Immigration Minister erred on two counts by sending an Iranian asylum seeker to Manus Island is the latest move against the government.

Transcript

LEIGH SALES: the government's hardline offshore processing regime is facing a High Court challenge.

The claim alleges the immigration minister erred on two counts by sending an Iranian asylum seeker to Manus Island.

If the court action succeeds, the plan to banish all irregular boat arrivals to Papua New Guinea will be in tatters.

The move came as Australian authorities went to the rescue of another boat in trouble. This time, 106 asylum seekers were saved about 200 kilometres off Christmas Island.

Five people are believed to have drowned.

As political editor Chris Uhlmann reports, concerns about asylum seeker arrivals may be high on the list of issues bothering city dwellers in Australia, but they're not front of mind in every corner of the country.

CHRIS UHLMANN REPORTER: They call it the wombat trail.

Every federal election, the Leader of the Nationals hits the roads less travelled.

WARREN TRUSS, NATIONALS LEADER: Meeting with real people, on the streets, to be talking to people about the issues that matter to them.

CHRIS UHLMANN: And there are plenty of problems to solve.

VOX POP: Everything's too expensive.

VOX POP I: The major issues that we see affecting our business are reliability of our markets.

VOX POP II: Housing.

VOX POP III: Police and education.

VOX POP IV: Election time is a time for everyone to tighten their belts.

VOX POP V: Aboriginal people dipping out.

VOX POP VI: Definitely a lot slower than it ever has been.

CHRIS UHLMANN: Here, Warren Truss meets some converts.

VOX POP VII: I've been a Labor voter all my life and you're getting my vote for the very first time ever I won't be voting Labor because I cannot stand Kevin Rudd.

CHRIS UHLMANN: But not everyone on the wombat trail votes National.

VOX POP VIII: Go Kevin 07.

CHRIS UHLMANN: Even in his own ultra safe Queensland seat of Wide Bay.

He could be deputy PM though.

VOX POP IX: I know, it's scary, isn't it?

CHRIS UHLMANN: And everywhere people are pondering the same question.

VOX POP X: Who do you vote for? In '07 we voted for Kevin Rudd and then we got Gillard and she just bugged us, really bugged us. But my concern is if we get Kevin back in there, is he going to serve like the full term and does Tony Abbott have the backbone to be a good Prime Minister.

CHRIS UHLMANN: All voters in 150 electorates across Australia will be mulling questions like that over the next 19 days and some have already cast their ballot. The pre-poll booths opened today.

VOX POP XI (Labor campaigner): We explained that they can vote if they're going away or they're working on polling day but otherwise it will be on seventh of September.

VOX POP XII: We came here to vote because we're going overseas in two weeks.

CHRIS UHLMANN: In Sydney, the Labor seat of Banks is on a margin of just over 1.5 per cent.

VOX POP XIII: I really think it might go Liberal, do you think? It might be a change. Who knows? You don't know. We won't know until after 6, that's for sure, they're all politicians.

CHRIS UHLMANN: Unlike their country cousins, the people of western Sydney feel the crush of a vast population. Here there's one issue which has dominated the three years leading into this campaign asylum seekers.

VOX POP XIV: Because they come with no idea, mate. Be a human being, come through proper channels and I'm happy with it. But to jump the queues and they are here, no.

CHRIS UHLMANN: This kind of sentiment put a slew of Labor seats at risk and drove multiple changes in government policy. Last year Labor back-flipped and adopted offshore processing on Papua New Guinea's Manus Island and Nauru.

CHRIS BOWEN, IMMIGRATION MINISTER: From this point forward anybody who comes to Australia by boat runs the risk of being transferred to an offshore processing place.

CHRIS UHLMANN: And a month ago a reborn PM went one step further, signing an agreement that consigned all asylum seekers to Papua New Guinea and slamming the door on any possibility of return, even for those found to be genuine refugees.

KEVIN RUDD: From now on any asylum seeker who arrives in Australia by boat will have no chance of being settled in Australia as refugees.

CHRIS UHLMANN: The Government points to a slower rate of arrivals since the policy was adopted as a sign the hardline stance is working but 2,784 people have come on 39 boats.

Today, another boat floundered 220 kilometres north of Christmas Island. 106 people were rescued from the water, two have minor injuries. Search and rescue operations have been suspended and up to five people are feared drowned.

Under the Government's plan every one of the people rescued today along with all boat arrivals since 19 July will eventually be sent to Manus Island. But today the first legal attempt to challenge that plan was lodged in the High Court.

MARK ROBINSON SC: We act for a man from the Republic of Iran who came to Australia on a boat. He claimed refugee status to Australian authorities and he was put on transport forcibly against his will, and sent to Manus Island in Papua New Guinea and he's been told that he's going to stay in Papua New Guinea. He will be taken to the mainland and kept there and that he's not Australia's problem anymore. The challenges to two decisions, to forcibly remove the man seeking refuge indefinitely and to declare Manus Island a regional processing centre to deal with an Australian problem. It's more than procedurally incorrect. We say the decision the Minister made is so flawed, it's subject of what we call jurisdictional error and it's not a decision at all. It's a nothing.

CHRIS UHLMANN: A directions hearing is expected soon and Mark Robinson is hopeful the case will be heard by the full bench.

MARK ROBINSON SC: If it's declared by the court not to be a regional processing centre, then they will have to do it again and do it lawfully and that will be difficult or pass legislation and retrospectively validate everything they've done wrong and that will be difficult too.

CHRIS UHLMANN: The Government believes it's plan is legally water tight.

MARK DREYFUS, ATTORNEY-GENERAL: We're working with Papua New Guinea to make sure they've got proper procedures for processing, for assessing asylum claims in Papua New Guinea and I'm not going to foreshadow what I think might be any grounds of challenge. I will say the Government is very confident in the legal basis, the legal foundation for the arrangement that we've struck with Papua New Guinea.

CHRIS UHLMANN: And the ministers for Immigration and Foreign Affairs are hoping to build on the plan. They've taken time out from electioneering to travel to Indonesia for a regional summit on people smuggling.

TONY BURKE, IMMIGRATION MINISTER: There will be some people who say I'm going to give it a go. There will be some people who get on board a vessel and take the risk and there will be some people who drown in doing so. But for everybody who makes it across to Australia they will find out that we were exactly serious about the implementation of our policy.

CHRIS UHLMANN: Amid the welter of issues around the nation, Labor knows a large part of its electoral fortune swings on neutralising the Coalition's border protection assault, having it appear to unwind mid-campaign would be a disaster.

LEIGH SALES: Political editor Chris Uhlmann.