



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

BILLS

**Migration Amendment
(Complementary Protection) Bill 2011**

Second Reading

SPEECH

Wednesday, 11 May 2011

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Wednesday, 11 May 2011
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Questioner
Speaker Mr ROBERT

Source House
Proof No
Responder
Question No.

(Fadden) (NaN.NaN pm)

Mr ROBERT (Fadden) (1 8 : 58): Cognisant of the time and cognisant of the day, we seek to stand here to discuss the Migration Amendment (Complementary Protection) Bill 2011—another change and another piecemeal approach to what is now universally derided as a debacle in protecting our borders. When Labor came to power in November 2007, there was a handful of people in detention. It is, of course, a great euphemism meaning a small number of people but I mean literally a handful. In fact, there were four—just four—in detention. I am led to believe that at the time, given a bill of something like \$100 million or less, the department—what is now DIAC—was saying that this was a large amount of money in expenditure. Well, we found yesterday in the budget that the expenditure that the Labor government is now facing is \$1.7 billion. It is an interesting aside that Australian families, some earning as little as \$45,000 a year, will have the family tax benefit supplement frozen for two years with no indexation, therefore reducing it in real terms. Families will suffer to the tune of \$2 million in Australia whilst we spend \$1.7 billion in dealing with a boat person crisis caused by, started by, enacted by and maintained by an inept Labor government and the changes they made in August 2008. It is quite clear to the Australian people that the unwinding of the Howard government framework that commenced in 2008 has become a massive pull factor, a magnet that has drawn people smugglers to this country.

Debate interrupted.

SPEECH

Date Thursday, 12 May 2011
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Questioner
Speaker Mr ROBERT

Source House
Proof No
Responder
Question No.

(Fadden) (NaN.NaN pm)

Mr ROBERT (Fadden) (11:51): I rise in continuance to lend some comment on the Migrant Amendment (Complementary Protection) Bill 2011. I started my discussion in the House of Representatives pointing out that this is one more iterative change to the policy of protecting our borders, one more in a long litany of disastrous changes that began in 2008. I made the point yesterday that in 2008, or prior to the last election in 2007, there were a handful of people in detention. Whilst a handful is generally a euphemism for a small number, I mean a handful. There were four and, I think, one child. The boats coming to Australia had, over many years, reduced to zero—at the most, there were three per annum.

Enter stage left the Rudd government and administration. In August 2008, the very effective policies that had stemmed the tide of people coming by boat to Australia were unilaterally stopped. In August 2008 they were pulled apart. Since 2008, 11,246 people have arrived on 224 boats. The government is desperately trying to seek solutions and has put together piecemeal approaches to try to stem the numbers. The government unilaterally dismissed offshore detention on Manus Island and Nauru with all sorts of hyperbole about how immoral such a thing was and how inhumane, and now of course the Prime Minister is in discussions with Manus Island and Papua New Guinea. Sheer hypocrisy. Using the same sort of inflated language they dismissed the temporary protection visas that, in concert with the Pacific Solution, had worked so effectively, and now the minister is looking at temporary protection visas for those who have committed some degree of crime while in detention.

The Migration Amendment (Complementary Protection) Bill is another piecemeal approach. I make it very clear: adopt the coalition policy sets that have stopped the boats in the past and I guarantee they will stop them again. Do not simply cherry-pick the bits that you think are politically saleable in this damaging affair that is the boat people, because it simply is not working. Since the last polling day, the total number of people who have arrived is 3,897, and they came on 69 boats. The total number of arrivals since Prime Minister Gillard became Prime Minister on 24 June 2010 is 83 boats and 4,694 people.

The government has completely, utterly, totally failed to protect our borders. It has weakened our national security, to the point where those three asylum seekers who were charged with setting fire to the boat, an action that cost a number of lives, were found guilty, given cursory sentences and then provided with visas to live permanently in Australia. If that does not put up a sign that says, 'Welcome, come along,' I do not know what does. We know that if you are in Afghanistan and are seeking asylum you have about a 10 per cent chance of making it to Australia. But, if you come across into Malaysia, where the persecution you are fleeing has gone and you are free, or if you fly to Kuala Lumpur, where the persecution you are fleeing from has stopped and you are now free, or if you go to Indonesia, where, again, you are free, and you then jump onto a boat to come to Australia, seeking a 'better' freedom, you have an over 90 per cent chance of being given a permanent visa in Australia, using the current appeals process. Iterative, piecemeal change is a disaster and does not work.

So here the government is with another amendment, another piecemeal change, to allow all claims for onshore protection to be considered under a statutory process, another process, for a single visa applicant against our non-refoulement obligations, in the same way that our non-refoulement obligations are triggered under the refugee convention. This bill is remarkably and substantially similar to a bill with the same name introduced in 2009 by the government, which the government let lapse. The differences between that bill and this bill are minor and technical and do not alter, ostensibly, the function of the bill.

In terms of definition, complementary protection is a term that describes a state's, Australia's, obligation to people when they do not meet the 1951 refugee convention definition but nevertheless are in need of protection on the basis that they may face serious violations of their rights if sent back to a country of origin. These amendments insert a statutory process to deal with applications, rather than have the minister consider applications against our international non-refoulement obligations when he is asked to exercise his interventionary powers. The minister's interventionary powers will remain, but clearly they are unlikely to be called upon in this area if the proposed statutory process is put in place.

Consistent with ministerial decision powers more broadly under the act, the minister's decision is, of course, non-appealable. The use of a ministerial decision process ensures broad flexibility in considering the specifics of each case. Looking at the facts, between 1 January 2010 and 20 October 2010, the minister finalised 1,690 requests for interventions. Of these, the minister granted visas to 438 people. According to the minister's office, of those 438 visas, only six satisfied the requirements of the proposed new complementary protection provisions. So we are putting in a whole new process, another piecemeal approach to dealing with the protection of our borders, ostensibly—looking at the minister's own numbers—for six people per annum when the minister's own ministerial prerogative and interventionary powers allow him to deal with them. This is a whole new process for six per annum. Surely the minister is not that busy that he cannot look at six cases per annum! Surely he does not need another process to deal with just six cases!

Consistent with the evidence previously provided to the Senate committee, DIAC and the minister's office have reconfirmed that they do not expect the number of applicants being granted protection visas under the complementary protection provisions to increase at all. So DIAC and the minister's office have indeed confirmed that that number of fewer than 10 per annum is about right. It begs the question why the government believes it is necessary to introduce a statutory framework to deal with fewer than 10 cases per annum, having just decided in 2009 to let the bill lapse. Why bother? Why bring it back two years later when it is 10 cases and dealing with them would take the minister a short amount of time? I am sure DIAC is suitably professional such that it can provide the minister with the advice he needs to make decisions, so why do this?

In evidence to the Senate committee DIAC advised that, of the 606 visas granted by the minister using section 417 powers in 2008-09, only 55 were granted out of the humanitarian program and that less than half of those cases involved non-refoulement issues. The minister's office has confirmed that no-one who would be considered under the new provisions who had previously failed to obtain a protection outcome under the current arrangements. They have also confirmed that the number of genuine applicants in this category is very small. I think the evidence is absolutely and utterly overwhelming that these measures will not add a single level of protection for those whose circumstances do not meet refugee convention criteria but who may trigger our non-refoulement obligations under other treaties and protocols. The government concedes that our current arrangements have honoured all treaty obligations in such cases. We consider

that the ministerial intervention currently in place delivers flexible arrangements for individuals and families whose circumstances are one-off, unique and complex and who may be disadvantaged by codified criteria administered by officials. The minister is also responsible, and accountable, for decisions that he makes.

It should be noted that superseding ministerial intervention powers with these amendments for another process could create a surge of vexatious claimants who are encouraged to believe that the government has further unravelled strong immigration control measures. Under this proposal, vexatious claimants would be able to extend their stay by appealing the negative decision in the courts. So not only are we dealing with a minister who apparently does not want to exercise his intervention powers, for fewer than 10 cases per annum, but we are putting in place a process that will allow vexatious claimants to appeal to the courts to extend their stays.

To say this is simply outrageous does not even come close to where we are. There are no additional protection outcomes in this bill—none. It does not provide additional protection outcomes to those that are currently afforded in practice or in process as we speak. This bill will not lead to any greater protection and/or compliance with existing treaty obligations. And there is no suggestion that the Australian government has been in breach of any of these obligations. It therefore begs the question once more. We are not contravening obligations. We are looking at a very small number of cases—maybe six to 10 per annum—that are complex by their very nature. The minister has intervention powers under the act that allow him to make decisions that are non-appealable, but the government wants to throw that out and put in place a bureaucratic process that is appealable to the courts. And the government thinks this is a deterrent to people smugglers plying their vicious and horrid trade.

I simply say to the government: this bill cannot be supported. It has no level of protection. If anything, it further weakens protection. I plead with the government to heed common sense. The government has flip-flopped everywhere. It has gone from changing our strong regime in 2008 to then deferring the review of decisions for Afghan asylum seekers for six months and Sri Lankans for other time periods. It has gone from the never-never solution of East Timor to discussions now about Manus Island and a one-for-five swap with Malaysia—we give one but five come, and we pay for it all—putting aside that when people arrive in Australia there may well be provisions for them to appeal to the courts to extend their stay and not go to Malaysia. These are all things that perhaps have not been considered.

Considering the debacle that is the government's border protection regime, I plead with the government to exercise some common sense. History is always a great lesson. History shows that the Howard measures worked. They were an effective deterrent. They took away the product from these dreadful people smugglers, and people did not put their lives in their hands by taking leaky boats to Australia. There was integrity in our refugee process for people coming from offshore into our country. It protected our borders and, importantly, lives were not lost—all of which cannot be said for the government's botched approach to border protection.