



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

Federation Chamber

BILLS

**Crimes Legislation Amendment (Law
Enforcement Integrity, Vulnerable Witness
Protection and Other Measures) Bill 2013**

Second Reading

SPEECH

Monday, 17 June 2013

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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Questioner
Speaker Keenan, Michael, MP

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Mr KEENAN (Stirling) (16:24): The Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013 deals with a number of measures, all of which are unrelated. I think that is a relatively disappointing aspect of it. It lumps together all of these things, some of which are benign and technical amendments but some of which require greater attention in the parliament. I will touch on each of the measures contained within this bill and explain the coalition's hesitation to support all of these measures without some further examination.

Schedule 1 includes amendments to ensure the effective operation of the Australian Commission for Law Enforcement Integrity. As stated in the bill's explanatory memorandum, the purpose of this schedule is to amend the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and the Law Enforcement Integrity Commissioner Act 2006. By doing this the bill seeks to improve the Integrity Commissioner's ability to access information held by the Australian Transaction Reports and Analysis Centre and to improve the ability of the Australian Commission for Law Enforcement Integrity to second employees of police forces who are not sworn police officers. This appears to be a relatively sensible thing for the government to be pursuing.

Amendments contained within schedule 2 seek to support victims of slavery, slavery-like offences and people trafficking offences. The bill amends the Crimes Act and chapter 8 of the Criminal Code to ensure that victims and witnesses in Commonwealth criminal proceedings are afforded appropriate support and protection. This measure does enjoy the full support of the coalition, and any measures that we can take as a parliament to improve the prosecution and to support victims of what are very heinous crimes should be welcomed by all members in this place.

Schedule 3 seeks to make amendments regarding people smuggling. This particular schedule is of concern to the coalition. I will come back to our concerns once I have gone through the other couple of schedules.

Schedule 4 makes amendments to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. The purpose of these anti-money-laundering amendments to the act is to ensure that review of decisions of the Australian Transaction Reports and Analysis Centre is efficient and effective, strengthen existing offences and add the Clean Energy Regulator and the Integrity Commissioner of Tasmania as designated agencies. Schedule 4 amends the act to strengthen the Commonwealth anti-money-laundering legislation and counterterrorism finance and legislative framework.

Schedule 5 seeks to make amendments to facilitate assistance to the United Nations Mechanism for International Criminal Tribunals. This schedule of the bill will amend the International War Crimes Tribunals Act 1995 and the International Transfer of Prisoners Act 1997 to recognise the United Nations Residual Mechanism for International Criminal Tribunals. This is a reasonable amendment that ensures Australia can continue to provide assistance to these tribunals and therefore has the support of the coalition.

Schedule 6 contains miscellaneous amendments including updates to the Australian Federal Police Act 1979 in relation to the provision of policing and regulatory services in the external territories. The AFP Act currently provides that the minister responsible for the AFP and the administrator of an external territory may enter into arrangements for the provision of police and regulatory services in that external territory. This no longer reflects the governance arrangements for some of the external territories whose responsibility for policy decisions and arrangements for the provision of services now rests with the minister responsible for these territories. The purpose of these amendments is to update the AFP Act so that the minister responsible for the AFP may enter into arrangements with either the administrator or the minister responsible for an external territory. This has happened on the back of the fact that the government has changed the minister responsible for external territories; therefore, this just follows up on some of the administrative arrangements required for policing, particularly in an emergency situation, within any of Australia's external territories. Although most of the schedules contained

within this bill do not trouble the coalition, schedule 3, which deals with people smuggling, does need to be further investigated by the Senate and that is what we are recommending happens.

As I mentioned earlier, the coalition holds concerns regarding schedule 3. This part of the bill proposes to ensure that the prosecution bears the onus of proof in establishing age, and removes references to wrist X-rays in the Crimes Act 1914 from materials that can be used to determine age. Item 1 of Schedule 3 omits the words 'a photograph (including X-ray photograph) or any other record or information' from the Crimes Act, and substitutes 'a record of information'.

The bill's explanatory memorandum says:

The intention of this item is to remove X-ray photographs from the definition of age determination information. This amendment is necessary to respond to concerns about the accuracy of wrist X-ray materials in making a determination in relation to a person's age.

Additionally, the bill makes a number of technical and enabling amendments to streamline investigations and prosecutions for people-smuggling crew, which appear quite sensible, but which will need to be further investigated by a Senate committee.

I wish to address this matter relating to wrist x-rays a little further. The government is putting forward an argument that the use of wrist x-rays to determine age has been widely discredited. However, there are vastly differing opinions on this matter, and the coalition is hesitant to approve the government's rushed amendments when we have not had a chance to fully examine this bill in great detail, given it was introduced in the last sitting fortnight.

The government has put forward the argument that the Senate Legal and Constitutional Affairs Committee in its inquiry into the Crimes Amendment (Fairness for Minors) Bill 2011 determined that the use of wrist x-rays has been discredited. However, the Australian Federal Police, on 6 June 2011, issued a clarification regarding the process used to determine the age of alleged people smugglers. The AFP said:

The current age determination process requires a wrist x-ray to be undertaken on all persons who claim to be a juvenile. The process involves utilising the *Radiographic Atlas of Skeletal Development of the Hand and Wrist*.

The AFP relies upon an independent medical expert to interpret the x-ray and determine the age of the person. The test provides an assessment of age between 11 and 19 years. The AFP relies upon the report that is then generated by the medical expert determining the age of the person. Where a person tests at 19 years of age, the AFP will typically proceed with the charging of this person as an adult in accordance with the Commonwealth Director of Public Prosecution's prosecution policy of the Commonwealth, and a brief of evidence is submitted by the AFP to the Commonwealth Director of Public Prosecutions. This method of age determination has been tested and successful before Australian courts of law.

On 6 December 2011, the then Minister for Home Affairs, Brendan O'Connor, announced that he had discussed the age determination process for people-smuggling crew with Indonesian ministers and officials as part of a visit to Jakarta. After discussions with the Indonesians, Minister O'Connor stated on 7 December 2011:

What we have made very clear to the Indonesian government is that we will set in place an administrative arrangement where the matter is not referred to the AFP but there will be a determination by the Department of Immigration and Citizenship, and then the International Office of Migration will accompany those minors home as quickly as possible.

In Senate estimates on 14 February 2012, the AFP confirmed the new procedural changes that occurred following the minister's discussions with Indonesia. Following the changes, if the Department of Immigration and Citizenship makes a determination that a crew member on a people-smuggling vessel is a juvenile, they are not referred to the AFP and the person is usually voluntarily deported.

The AFP also confirmed at the estimates hearing that if the crew member was assessed by DIAC to be an adult they would be referred to the AFP for investigation. These changes made by the government do not appear to be well considered. As a result, any further changes they seek to make in the use of wrist X-rays need to be thoroughly examined. This government has a history of making ill considered policy and legislative blunders, particularly in relation to people-smuggling, which is why we in the opposition believe it would be prudent for

the Senate committee to examine this bill in greater detail—as we have not been allowed enough time to consider this rather large bill that contains these many divergent measures.

I want to conclude by saying that the coalition does not oppose the passage of the bill through the House. However, as I said, we believe that some of the issues should be examined further by a Senate committee and reserve the right to move amendments in the Senate pending recommendations made by that committee. I know that we are in the final sitting fortnight of this parliament, mercifully for the Australian people, but it would be wise if the government would allow the Senate to have due consideration of what is contained within this bill. Most of the measures would seem to be relatively uncontroversial, although they are many and varied. In fact, it might have been better handled by the government if some of these measures were contained within different bills, because they really bear no relationship to one another at all. In particular, we are concerned about removing the wrist X-ray from the age identification process for people smugglers.

Clearly, we want to be able to have some sort of mechanism that allows law enforcement officials to make some sensible determination of age, and of course that is not necessarily easy to do. The wrist X-ray, although it is subject to debate, is one way that we can reasonably do that. I would be particularly interested in what the Senate committee would find out about the use of wrist X-rays. Obviously that could inform the discussions that the Senate has in any proposed amendments, if they were to come up in that place. On that note, I will leave it there. I hope that the government will see a normal and sensible time frame through for a bill of this nature, particularly considering it contains such a diverse range of measures.