HOUSE OF REPRESENTATIVES

BILLS

Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013

Second Reading

SPEECH

Wednesday, 11 December 2013

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES
Mr WILKIE (Denison) (11:06): I am very concerned about the Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013. In particular, I am very concerned about the way in which it would alter the process for complementary protection. I am also very concerned about the way that complementary protection will be decided, as the bill fundamentally alters the process that occurs before someone might be granted complementary protection. This is all about abolishing proper process. That is something we should all be very, very concerned about in this place. Currently there are some people who make application to come to Australia, or who come to Australia who, through no fault of their own, do not fit neatly within the provisions of the refugee convention for any number of reasons. Often these cases are very tragic, and there is a self-evident and pressing need to give those people protection.

Up until now, there has been a proper and a good process. People who might fit within the category of this complementary protection could make their case to the Refugee Review Tribunal and, if there is an unsatisfactory outcome at the tribunal, they might try to progress their matter through the Federal or even the High Court. That would seem to be an eminently sensible, appropriate and reasonable way to respond to those people, particularly for a civilised, wealthy, lucky country like our own. They have the opportunity for their circumstances to be reviewed, and the opportunity to appeal if there is an unsatisfactory outcome. It delivers them natural justice and procedural fairness—just the sort of thing that a country like Australia should have in place, and should be proud of and work hard to defend. But this government would do away with that.

In fact, this government would basically abolish the whole process and say that it is up to the minister to make a case on a case-by-case basis. That may well work when you have a very fine minister—and I am not making any criticism of our current minister or previous ministers—but what would happen if, in the future, you were to have a ruthless minister: someone lacking in compassion; someone wanting to, for their political benefit, clamp down or even do away entirely with people getting complementary protection? He or she would have that power. We should not have laws of the land that rely upon good people being in these positions at all times. Our regulatory framework must provide protections against a bad minister or someone making bad decisions. So this abolition of the process is a fundamentally bad thing.

Let us put a human face to this. I am advised that between March 2012 and November 2013 only about 55 protection visas were granted on complementary protection grounds. So we are not talking a lot of people. Why on earth then would the new government want to so brutally attack proper process and so brutally put at risk the welfare of people genuinely in need for the sake of this many people coming to this country and getting protection?

I will give a few examples of these people, because I think we need to personalise this. Far too often the debate in this country about asylum seekers and irregular immigration is about grand policy and grand announcements, and we sometimes lose sight of the fact that we are talking about human beings: men, women, girls, boys, babies—every one of them a precious human being with their own story to tell. If they were members of our extended family I am sure that some people in this place would take quite a different approach to them.

One story comes straight to mind, a story I have been involved in quite recently. Living just outside Hobart is an Iranian—and I am sure he will not mind me mentioning his name—known as Affi. Affi is a young man. He came to Australia from Iran. He is gay, and his is a particularly tragic story. Affi was reported to the authorities by his father for being gay. Affi was arrested, taken into custody in Iran and brutally beaten. He still carries to this day the scars from that episode. He fled to Australia with his partner. He eventually made it to Australia, but the previous Australian government and the current Australian government do not see fit to quickly give him protection. He may not actually fit neatly within the criteria of the refugee convention. He certainly would
fit neatly within the provisions of complementary protection, but, regrettably, he is on a bridging visa, or was when last I heard.

Affi, if returned to Iran, would genuinely go back in fear of his life. It is a serious crime to be gay in Iran. People are put to death for being gay in Iran. Why on earth would this government or any government want to deny Affi, for a start, protection, immediately, and not give him certainty that he can stay in Australia?

And why on earth would any government want to do away with an effective and proper process that hears the claims from people like Affi and gives people like him protection when those claims are found to be warranted? That is what a civilised country does—a rich country; a lucky country. But instead this government wants to do away with the sort of process that would effectively hear Affi's claims and give Affi rights of appeal to the Federal Court and High Court if his claims are not handled in a way that gives a satisfactory outcome.

I know Affi personally and I can say that he would make a very fine Australian. He desperately wants to be an Australian and contribute to this country, and he would be a real asset to this country. He would bring skills and a little bit of a very rich Persian culture which would make this country all the richer and better if only we were to let him stay permanently.

There are some other examples that I have read about of people who have in fact been given complementary protection in recent times. For example—and I will not mention names in these cases—there is one person, a native of Ghana, who developed a mental illness after the death of his parents and fled to Australia. If this person was to be not given complementary protection and forcibly returned to Ghana, there would be a very real risk that this person would be placed in an institution in that country, and those institutions are awful places. It is a country where people with mental illness are often not treated at all, but, to the degree that they are handled by the authorities, it is in a terrible way. This person made it to Australia. He went through the existing arrangements for complementary protection; he went through the proper process. He has been given complementary protection. That is a good thing.

Another example is of a person, a native of Nepal, who gave information to the police in Nepal and fled to Australia. Again, this is someone who would not fit neatly within the refugee convention but who is well suited to the provisions of complementary protection. He cannot be sent back. He has given information to the police and is at risk from a very broad network of criminals in that country. Again, he is just the sort of person who does not fit neatly within the provisions of the refugee convention. He really does deserve to have his case heard through proper process and with resort to appeal to the Federal Court and High Court, and so on.

Another example concerns a person from Syria. He was persecuted for his Christian background and practices, and he made it to Australia. There was not actually enough evidence in his case for him to be granted protection under the refugee convention. Again, he was granted protection under the complementary protection provisions. An interesting thing about this case is that he has low advocacy skills and could not make the case very effectively, yet it was self-evident to the people who were dealing with him that this was someone who was being persecuted and genuinely warranted protection in this country, but he could not quite get over the line with the refugee convention and its requirements. Again, these sorts of people need to have certainty that they can go through proper processes in Australia and can appeal to courts if their claim is not handled satisfactorily in the first instance. He is just the sort of person whose outcome, if it were left to the minister, would depend on the whim of the minister at the time—he may just say yes but then say, 'No, I've had a bad morning and our numbers are up so I will say no to this character.'

Another example involves three people—a daughter and her parents—who came from India. She had entered into a marriage that was violent and cruel, so she wanted to leave it. But her husband threatened to bring a false dowry claim and have her daughter abducted and raped to force her compliance. Again, it does not fit neatly within the refugee convention, but does meet the criteria for complementary protection. Again, she is just the sort of person who needs to have the certainty to front up to the Refugee Review Tribunal and have her case heard. If there is an unsatisfactory outcome, she needs to know that she is accorded natural justice and procedural fairness and can make an appeal to the Federal Court or the High Court and get a satisfactory outcome, hopefully, at the end of the day. Again, we do not want cases like that decided at the whim of the minister of the day. Maybe we would have a good minister who would say: 'Yes, no problem there. That person can have protection.' But what if it is a ruthless minister, or a politically motivated minister or someone who just wants to put a cap on the numbers one year, and that person misses out. This is not the behaviour of a rich and civilised country like Australia.
This is all about minimising the number of people coming to this country, and having in place a ruthless regime of deterrence. It is another theatrical episode by the new government to appear tough on those people who do not look like us but want to come to our country. It is another example of a cruel and ruthless policy by this government, which, I would add, is not much worse, but a bit worse, than the regime of the previous government. We have had a succession of bad policies by bad governments, in my opinion, when it comes to irregular immigration.

But just when you thought the previous government could not make things any worse, the new government are doing so. They are committed to offshore processing—a cruel arrangement. They are committed to mandatory detention and to temporary protection visas. These actions are not in accord with the word or the spirit of the refugee convention. It is about time Australia started to act like the civilised and rich country we are and started to honour both the wording and the spirit of the refugee convention. Until this country adopts a more humane and legal response to irregular immigrants we are going to be judged very badly by the international community, as we should be.

This should not be about putting in place a brutal deterrence regime. This should be about Australia acting like the civilised, wealthy, lucky country we are. When someone comes to our shores or makes an application from offshore, but particularly when they come to our shores, we should give them protection, hear their claim and give them permanent refuge if those claims are found to be true and honest. As a signatory to the refugee convention, that is what we should be doing.

Also, when people coming to Australia do not fit neatly within the refugee convention, but it is self-evident that they are in strife and that we should do the right thing by them and give them protection, we should make sure we have in place the very best process for the granting of complementary protection. We should have a proper and full process, one that accords people natural justice and procedural fairness.

We should hang on to the Refugee Review Tribunal. We should still allow it to make the decisions about complementary protection. We should allow people to continue to make appeals to the Federal Court and High Court if the outcome has been unsatisfactory at that early stage. That is what a civilised and rich country should be doing. I will not be supporting the Migration Amendment (Regaining Control Over Australia’s Protection Obligations) Bill 2013. I suspect I will be one of very few people not to—prove me wrong, Labor. Hopefully Labor will also oppose this. I pray they will. It is about time Australia started acting like the civilised and lucky country we are.