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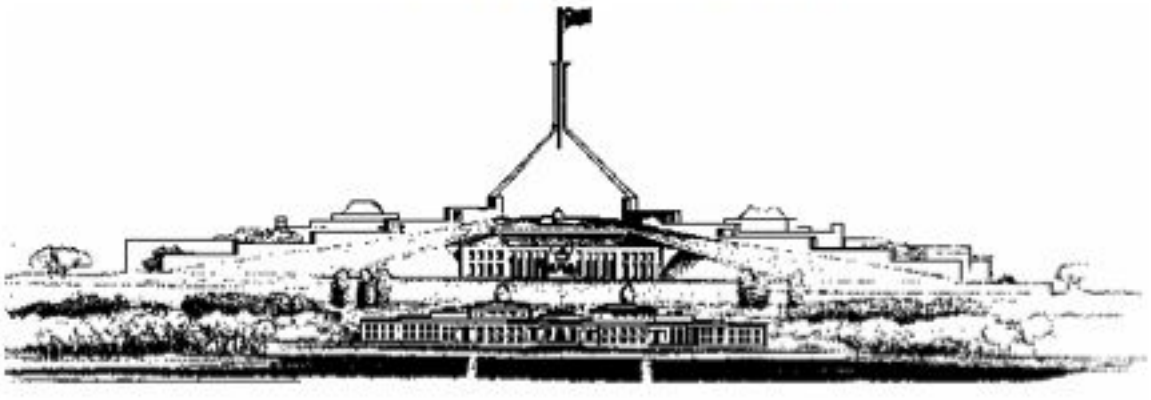

HOUSE OF REPRESENTATIVES

BILLS

Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014

Second Reading

SPEECH

Wednesday, 22 October 2014

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner		**Responder**	
Speaker	Giles, Andrew, MP	**Question No.**	

Mr GILES (Scullin) (11:16): It is pleasing to see such interest in my contribution to this debate.

Mr Frydenberg: It doesn't often happen!

Mr GILES: No. I am very excited, particularly to see the Parliamentary Secretary to the Prime Minister here, because I might touch on matters of interest to him.

The member for Longman, in his contribution, which was a contribution I was pleased to be in the chamber for, started by talking about the need to rise above partisan politics in this debate—an interesting statement, having regard to the 14½ minutes that followed. He also spoke at some length of the hypocrisy of the Left. This was interesting too, because all he really spoke of—and we have a very large bill before us—was the politics of the asylum debate. I am not sure if, in the course of his contribution, he referred to any particular provision of this important piece of legislation which is before us. He merely painted with a very broad brush across the politics of this. The allegations at the heart of the member for Longman's contribution need to be drawn out, because they are so very extraordinary in light of the history of this debate in this place and in the Australian community since 2001. It was just extraordinary to receive such a lecture from a member of this government in such terms.

There is no doubt that the policy challenges we face—and all developed and, indeed, many developing nations face—in respect of the world's problem of displaced people and refugees, people seeking asylum, are vast. They are vast, and there is no room in this place, from any of our perspectives, for the sort of triumphalism we heard from the previous speaker. This is not a problem which has been solved. This is not a problem which has been solved by Australia or indeed by anyone else. The policy questions are hard. The politics need not be. That is why it is so disappointing, when we are considering an important bill which raises some very significant issues, to have a contribution so long on rhetoric and so short on the serious questions before us now, as well as unmindful of the context within which this debate takes place globally and in our region.

I am pleased to join the shadow minister in opposing the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. I am very pleased to put my opposition to the bill on the record. It is legislation of familiarly narrow purpose but which carries very wide-ranging consequences—for our approach to securing human rights and for the operation of our democracy. It goes very significantly to the way in which big decisions—decisions affecting lives—are made and how those decisions are to be scrutinised and those making them held to account.

I was interested, just as I was walking to the chamber, to notice that The Guardian today has reported on actions of the minister to issue conclusive certificates removing rights of appeal, on grounds of national interest. Again, we see here the action of a member of the executive to step around the inconvenience not only of the approach of the High Court but the inconvenience of going through the legislative process in terms of exercising his powers. What a stark contrast that makes to the remarks of the former minister Chris Evans, who was deeply troubled by the obligations imposed upon him to play God. Here—and this bill sets it out just as much as the issuing of the conclusive certificates does—we have a minister who is very, very well prepared for, and seems to wear lightly, the burden of determining people's futures himself.

This is a very complex piece of legislation, and it warrants very close attention. This complexity is compounded not only by the wide range of matters dealt with across its seven schedules but also by the extensive provision for regulations yet to be seen but which would do very significant work to enable the operation of the bill. I note that many organisations and academic experts have expressed significant concerns. As I said when this parliament last debated amendments to the Migration Act, I think it would have been preferable for there to be more time to consider these views, which go to the operation of what is a very technical piece of legislation that we all know has been the subject of very extensive judicial review, particularly in circumstances where the effect of recent judicial review clearly in significant part led to the bill before us.

This legislation, if enacted, would take Australia to a new and uncomfortable place in relation to our international obligations and, I believe, our international standing. I am mindful of the attitude the United Nations High Commissioner for Refugees has taken to the bill. In a statement dated 26 November, the UNHCR refer to serious questions going to the interpretation of the refugees convention, a matter dealt with in schedule 5 of the bill. The statement reads:

UNHCR considers that any policy and legislation relating to the protection needs of asylum-seekers, refugees and stateless persons, must fully respect and comply with international refugee, statelessness and human rights obligations, and not unduly restrict these as some of the provisions appear to do. At a time when unprecedented numbers of people are compelled to flee persecution, serious human rights violations and armed conflict, a full and inclusive interpretation of established protection principles is essential for the integrity of the global system. The need for cooperation and reponsibility sharing both regionally and globally is crucial.

It is a powerful statement and a statement all of us in this House should have regard to when we think about the effect of the jurisprudence here and internationally which is being thrown overboard—when we think simply about meaning what we say when we sign up to important international instruments. It is also a reminder of the tricky way in which this government through this legislation seeks, in effect, to weasel out of meeting obligations we have assumed and maintain we ought to continue to assume internationally. But it is also a reminder of the wider context of the world in which we now live.

That is not the context of the press releases issued by the minister and the member for Fairfax prior to this legislation being produced in the House. They are very different questions. It is troubling to me that the minister, who seems to be so very proud of the border protection part of his title seems so unconcerned by the state of the world beyond those borders. Australia must do better than this.

I said at the start of this speech and suspect I will have the opportunity to say again that the challenges of policymaking in this area are vast but the challenge Australia faces as a rich and free country to lead by example should not daunt us from rising to those challenges. In the uncertain world in which we now live we have got a choice available to us to take a high road and not always reach for the lowest common denominator. So, whatever else we must do, we must be an exemplar of human rights protections and recognise that this is a precondition to better regional engagement, to finding the real regional solution that Labor reached towards in government and which is a precondition to making meaningful progress solving these problems at a regional level. This sleight of hand replacement of references to the refugees convention with this so-called new independent and self-contained statutory framework setting out our version of what our convention obligations ought to be is just one of many troubling elements in this bill.

The shadow minister has gone through the many provisions in the seven schedules of this bill in some detail. I will touch only on a couple of aspects which I find particularly troubling, in particular those provisions set out in schedule 4 which restrict and in some cases remove the capacity for merits review of protection and decisions. In schedule 4 of the bill there is provided for a new scheme of fast-track assessment for protection schemes and a new path 7AA of the act. This would apply to specified categories of asylum seekers, in particular to those who arrived on or after 12 August 2012 and who have applied for protection visas.

Let me be clear about this: we in Labor support the prompt assessment of claims. Of course we do. That is part of minimising harm and doing justice to individuals. But, again, having regard to the determinations that we are talking about here cannot involve expedition at the expense of getting the decisions right. The process must be both credible and robust. I am conscious standing here that a very similar regime was put in place in the United Kingdom and was found there to have been unlawful in July of this year, and this was as I understand it on broad unfairness grounds that may well apply to the regime set out in schedule 4.

This regime consists substantively of a new merits review body—the Immigration Assessment Authority—within the Refugee Review Tribunal which would have the objective of providing a mechanism of limited review that is efficient and quick in place of present recourse to review via the RRT proper. It sets out the manner in which the Immigration Assessment Authority would operate, although the details of this fast-track process are not provided for and remain presently unknown, going further to the concerns I set out in relation to the similar process in the UK.

I note that the explanatory memorandum states that natural justice requirements are to be provided for by regulation. Adverse initial decisions would be referred to this new body, which would be under no duty to accept

or request new information or to interview applicants, which goes to concerns other members and I raised with regard to changes to protection arrangements in another bill debated recently in this House. Unhelpfully, this term is not defined in the bill. I do note the parliamentary secretary at the table on our second red tape repeal day. The government's enthusiasm for reducing the legislative burden does not seem to extend to the area of immigration law.

New information is only to be considered by the IAA in 'exceptional circumstances'. This should be an important provision; and, unhelpfully, this term is not defined in the bill, again going to these significant unfairness considerations. While it is the case that judicial review remains available, recourse to merits review is clearly very significantly restricted through this process. I also note that for certain people termed in the act to be excluded fast-track applicants will be denied any recourse to merits review. This scheme set out in schedule 4 of the bill before us would deny applicants a fair assessment of their protection claims. It raises a real risk of refoulement of people Australia is under an obligation to protect from serious harm. Ministerial discretion is no cure for concerns of this nature.

I turn very briefly to schedule 1, which would grant power to the minister to detain people and transfer them at sea, including on the high seas. It would appear that this relates to issues that are presently before the High Court. I note that we have a separation of judicial from executive and legislative power in this country, and we have it for good reason. I think we should be first considering what the High Court has to say and then considering whether legislative action is warranted rather than going about this the other way around. The High Court should be more than an inconvenience to this or, indeed, any government. It has significant responsibilities which we should all have regard to. As the shadow minister said, Labor members remain open to any policy that saves lives at sea.

However, we do have significant concerns about the safety at sea of personnel, as well as significant concerns going to the maintenance and the quality of our critical relationship with Indonesia—a matter I touched on earlier in the context of the broader desirability, indeed necessity, of achieving a meaningful regional understanding of how these issues can be progressed. I note and am mindful of the advice of the Kaldor Centre, which have advised that the provisions here grant extraordinary powers to the minister to detain people at sea and to transfer them. They also note that there are significant constitutional questions, further to my broader comments about the appropriate role of the High Court.

Finally I turn very briefly to the issue of temporary protection visas. I note that talk about this bill, particularly commentary by the member for Fairfax, raised some hopes and sparked some useful discussion about how we can do greater justice to people in need. Labor members here stand as being open to pathways to permanency. But a pathway to permanency is not before us; instead, what we see here is a return to the sorts of arrangements where we keep people in limbo—barring people from ever holding a permanent visa and denying them rights to family reunion, something that is so critical to maintaining mental health. Labor has a longstanding policy of opposing TPVs, for good reason—they do not provide a sustainable solution for refugees. The uncertainty exacerbates real mental health issues and denies people the capacity to live full lives. As well as significant international law concerns with these provisions, they put people in limbo. There is no deterrence value here, even if you accept that to be a valid policy objective—they only place vulnerable people in a place of uncertainty. For these reasons and many more, this is a complex, unnecessary and unhelpful bill which should be rejected by the House.