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HOUSE OF REPRESENTATIVES

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Migration Amendment Bill 2013

Second Reading

SPEECH

Wednesday, 12 February 2014

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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Questioner
Speaker Bandt, Adam, MP

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Mr BANDT (Melbourne) (10:09): I rise to oppose the Migration Amendment Bill 2013 on behalf of the Greens and to record our shame and disgust that Labor is now supporting a position that will see people who may have done nothing wrong at all locked up for years on end.

This is Kafka on steroids. If this legislation passes, it will mean that someone who comes here seeking our help and is told, 'No, we can't help you because there is a security assessment,' and who then says: 'I think that's not right, I want to challenge it. Tell me why you say I can't be here,' will be told, 'No, we can't tell you because that is a matter of national security.' When this was raised under the previous government, it was rightly acknowledged that there was a problem. It was acknowledged that this puts people in a legal limbo where they are denied the basic right that every other Australian citizen has, which is to know the case against you and to be able to have it challenged and reviewed independently. There were some steps taken—albeit, we would say, insufficient—to put in place a process of independent review so that someone who was in that legal limbo could at least have their case heard, if not bindingly determined. This legislation not only takes that away but puts people who are coming here seeking our help in a situation that no Australian citizen would ever want to be in: you end up in a situation where you do not know the case against you and you have no right to challenge it.

This legislation is an affront to the basic principles of the rule of law, and for a party that calls themselves 'liberal', this is reactionary. There is nothing liberal about saying that an individual, whether or not they are a citizen of the country, has no right to know the case against them, but that is exactly what this government is doing. This bill seeks to amend Australia's rigorous refugee determination process by overturning a number of High Court and Federal Court decisions, and the amendment is inconsistent with Australia's international obligations. It does not afford procedural fairness and it further entrenches the practice of indefinitely detaining men, women and children who have been found to be genuine refugees but who are deemed a 'security threat'.

There are currently about 50 refugees, including five children, who have been indefinitely detained as a result of this and the former government's practice. In August of last year, the UN Human Rights Committee found that Australia was in breach of its international obligations and had committed 143 human rights violations by indefinitely detaining 46 refugees, including children, due to adverse ASIO assessments. Rather than addressing these violations and improving our processes, this bill seeks to do exactly the opposite.

As I alluded to at the start of my speech, individuals who currently receive an adverse security assessment have some limited rights for appeal, and the Greens welcomes the announcement of the independent reviewer as an acknowledgement that, under Australian law, there is no fair legal process for refugees who receive a negative assessment. We acknowledge the work of the Honourable Margaret Stone in reviewing a number of ASIO assessments, but we remain concerned that the independent reviewers powers are not binding or compellable.

The Joint Select Committee on Australia's Immigration Detention Network last year resolutely rejected the indefinite detention of people without any right of appeal and recommended that the Australian government and ASIO establish and implement periodic reviews of adverse refugee security assessments to ensure that genuine refugees were not subject to indefinite detention. They went on to recommend that the Australian Security Intelligence Organisation Act be amended to allow the security appeals division of the Administrative Appeals Tribunal to review ASIO security assessments of refugees and asylum seekers. It remains our view that those recommendations should be adopted, but instead the approach of this government is to condemn potentially genuine refugees who have done nothing wrong to indefinite detention.

I do not know whether the minister has spoken to any of the people who are in this situation, but I have. I have spoken to and visited people who are in detention and who find themselves in this Kafkaesque legal limbo. One of them told me that he was in a country where there was a civil war going on. He happened to be in the wrong place at the wrong time and, together with other members of his extended family, was moved out of their home into another area and was directed to attend a certain school for a while. He told me that he got out of there as

quickly as he could because he did not want to go to that school. What he wanted to do was go on and become an engineer, so he got out of there to find a place where he could go and study and become an engineer. He said he was coming to Australia because he thought that it could be that place. He also said that ASIO had told him: 'No, you were in that place at that school. We believe that that school has links with something objectionable under Australian law, so we are refusing your assessment.' Well, he was not even told that; that is what he interpolated, because he was told nothing, but that is what he assumed.

Was he right that he was someone who had done nothing wrong and deserved to be treated as a genuine refugee, or was ASIO right that that was just a front story for someone who in fact should not be here in Australia? I do not know. I do not know the answer to that, but it should be able to be tested. It should be able to be tested in exactly the same way as, if a government department has made a decision about an Australian citizen that has wrecked their life, that decision is able to be tested.

What this bill will do is say, 'It doesn't matter that that person might have actually been right; we will just take ASIO's word for it.' Maybe ASIO was being overcautious. Maybe ASIO did not know anything about the individual but was just making a generalised risk assessment about people who came from that place. But we will never know, and we may have just condemned someone—who could have gone on to become a valued Australian citizen and an engineer working for us—to a lifetime of indefinite detention, if not to being returned to a place where they might be killed. That is the effect of this government's bill. It is shameful that Labor is now supporting it. It is absolutely shameful. Come the first test, in this new year, of standing up to the brutality of the Abbott government and its willingness to use cruelty to gain votes, it is disgraceful that it looks like this bill will pass this House and potentially even this parliament.

People may also remember the case of the woman from Sri Lanka that got significant media attention. She and her children spent many years in the Villawood detention centre because of an adverse security assessment. She did not know why she was facing indefinite detention, but she knows that her children, one of whom was born in detention, are suffering. This bill further entrenches that practice, meaning that refugees like Ranjini and her children are being locked in detention for the rest of their lives, despite being found to be in genuine need of Australia's protection.

It would be appalling if the Australian government treated an Australian citizen in this way or if a foreign government treated an Australian citizen in this way. We are effectively saying that some people are more equal than others—that some people have the right to go to court and have adverse decisions against them tested and independently reviewed to work out whether they were rightly or wrongly made, but, if you happen to have the misfortune of fleeing civil war, fleeing persecution, fleeing torture and coming here seeking our help, we will not give you that support.

When I spoke to one of those people who was in indefinite detention, he was more than a week into a hunger strike. He said to me, 'I am very fear to die.' That was the second time I spoke to him personally. As I spoke to him, he was fighting back tears. He said he just could not understand why he did not know the case against him. Why could he not respond to these unknown claims about why he would not be a good member of Australian society? He struggled to understand his predicament. He said, and he repeated, that all he ever wanted to do was to complete his engineering studies and not be a threat to anyone.

As I say, I do not know whether that is right or wrong. What the minister is saying is that he knows in the case of everyone who comes here seeking help. He knows absolutely that they all deserve to be sent back. He expects he will win a few votes out of it. He expects it will show this government up as being brutal and uncaring and that that will work to its advantage.

We have in this parliament the opportunity to stop a major plank of cruelty from this Abbott government. Really, now, the light turns onto Labor as to whether they are prepared to do that or whether they will be complicit. For people like Ranjini and like the young man that I spoke to who was in detention, it is now up to Labor as to whether they will lock those people up indefinitely and perhaps send them back to a life where they risk fear and persecution.

Lastly, there is much debate in this place and around this country about asylum seekers and about boat people, about people who come here seeking our help. Can I say to you, Mr Deputy Speaker, that if I were in a situation where my life was threatened, where my family's life was threatened, where people I cared about were at risk of

being killed or persecuted or tortured, and I was caught up in the middle of a civil war and forced to be in places that I did not want to be, I would jump on a boat to get out, and I reckon everyone else here would as well.

I would do whatever I could to bring myself and my family to safety. And I would hope that if I landed in a rich, developed nation they would look at my case. They would not just say, 'You came from a place where there are potential terrorist activities going on, so you must be a terrorist yourself.' If those things were not going on in that place, they would not be fleeing in the first place. Of course there are always going to be these issues. But I would hope that if I landed here my claim would be independently assessed, and that if there was a case against me I would have the right to argue it in front of a court. If I lost then you would accept the decision. But to not even have that basic right to know the case against you, to be condemned to a Kafkaesque legal limbo for your whole life because you are told you are a national security risk but you cannot be told what the case against you is for national security reasons, is something that we should all be deeply ashamed of. I just hope that if I was in that situation I would be treated better than the current minister is proposing to treat everyone else who comes here seeking our help.