HOUSE OF REPRESENTATIVES

BILLS

Migration Amendment (Complementary Protection) Bill 2011

Second Reading

SPEECH

Wednesday, 11 May 2011

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES
Dr LEIGH (Fraser) (18:47): As a child, four years of my childhood were spent in Malaysia and Indonesia, including attending primary school in Banda Aceh. I was there because my father was working on an AusAID project to improve education in Indonesia. As the only white child in my class, I came to appreciate perspectives and cultures quite different from my own. It also does not hurt to have the experience of being the outsider.

Australia is a modern nation. Our humanitarian ethos has advanced considerably since 1951, when the Refugee Convention was originally drafted. Our moral attitudes towards asylum applicants can no longer be bottlenecked by a convention written in the context of post-war Europe. Those who require humanitarian refuge but fall outside the 1951 convention include individuals who are at risk of being subjected to the death penalty, such as a woman at risk of an 'honour killing' or domestic abuse, or a person who would be prosecuted on the basis of their sexuality. These are all people of whom the vast majority of Australians would feel that the federal government has a duty to protect. Does the coalition really believe that someone who would be jailed for being gay in their home country does not deserve our protection? Is a woman who is at risk of an honour killing really a woman who is making a vexatious refugee claim?

The Migration Amendment (Complementary Protection) Bill 2011 will provide an international standard complementary protection regime for those individuals seeking protection visas under Australia's non-refoulement (non-return) obligations. The bill will ensure that Australia continues to meet non-return obligations in a transparent and compassionate fashion, according with the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child.

The current bill reasserts the government's position to ensure that Australia meets its international legal and moral obligations. Rather than relying on an informal system employed at the discretion of the Minister for Immigration and Citizenship, the new complementary protection legislation reflects the Gillard government's commitment to humane and just treatment of asylum seekers. This amendment will update an outdated law—a law that is now over two decades old. A number of legal academics, human rights lawyers and local and international humanitarian groups have noted that relying on a regime which is non-reviewable, non-compellable and wholly dependent on personal discretion is far from ideal. Under current arrangements, those seeking complementary protection are referred to the minister through section 417 of the Migration Act. After review criteria are met, the minister may then exercise his or her discretion to intervene and grant the individual a protection visa.

It is well-known that this process is inefficient and time-consuming. It adds stress to the applicants. The discretionary role of the minister in this process causes excessive uncertainty and delays for applicants seeking protection. Over the years, a broad consensus has formed over the need for complementary protection provisions to be explicitly incorporated into domestic legislation. Groups supportive of such a legal codification include: the United Nations; the Australian Human Rights Commission; Amnesty International; the Uniting Church; the Law Council of Australia; and the Refugee Council of Australia.

I would also note that the codification of complementary protection has been recommended by several parliamentary committees, the most recent being the 2009 Senate Legal and Constitutional Affairs Committee. The passage of this bill would place Australia along with nations such as Canada, the United States, New Zealand and 27 member states of the European Union. All of these nations have already moved to create harmonized, legal approaches to non-refoulement by codifying complementary protection within domestic laws. This is not a risky reform. This is not a radical reform. This is a common-sense reform. The bill ensures transparency, due process and consistent humanitarian outcomes and removes concern regarding the use of a non-codified system to address complementary protection obligations.

This government does not believe that introducing a legislated complementary protection framework will increase people-smuggling. The single procedure process, already in place in the UK, the Netherlands, Canada
and Ireland, will assess all claims for protective asylum, first against the refugees convention, and only then move to assessment under complementary protection criteria. Nor will this bill increase the number of protection places allocated to new arrivals. It should be remembered that those granted protection asylum, who are not recognised as refugees under the 1951 convention but still owed complementary protection, are dealt with under the existing discretionary arrangement. This bill acts only to improve the system.

The bill also saves administrative resources and relieves some of the pressure put on decision makers within the Department of Immigration and Citizenship and the Refugee Review Tribunal. In a recent editorial in the Australian, the member for Cook stated that the legislation runs the risk of 'creating a further policy incentive for people-smuggling', while the current discretionary system should be retained because it promotes what he called 'flexibility'. This stands in stark contrast to his predecessor as the member for Cook, the Hon. Bruce Baird, who rightly said: 'This is not the way we should be treating the weakest and most vulnerable in our community.'

The member for Cook, in his ongoing efforts to make political capital out of Australia's humanitarian and refugee programs, has in the past managed to confuse visa subclasses and erroneously introduced a private member's bill that accused the government, wrongly, of ignoring female applicants for the woman-at-risk visa. He argues that any amendment to our migration laws is a confession that 'push factors' do not matter. By this logic, Labor's fiscal stimulus in 2008-09 must have been an admission that Australia caused the global financial crisis. It is a strange view indeed.

By blocking this bill, the opposition would be showing a callous attitude to women fleeing domestic violence, physical abuse and sexual assault who come to Australia to seek refuge. Too often we hear deliberate inflammatory language from our political opponents, rhetoric that is entirely divorced from reality. We must never forget that behind every statistic there is a human story. My grandparents lived in Victoria in Seaholme in a two-bedroom house with their four children. Their house was constructed by my grandfather, who was a boilermaker and not a carpenter, so there was always something that needed fixing around the home. Living by the seaside did not exactly help as the cold blustery winds were forever finding their way inside.

My mother tells the story of her father, my grandfather, going down to the local tip to get some more building materials, where he met an Egyptian migrant woman who had three children with her; she was just there at the tip. The woman said they did not have a place to stay in, so my grandfather invited them back to his own home—a two-bedroom home that already housed six people. My mother said that as a little girl, when she saw this new family of four coming into her home, she wanted to cry as she was so angry with her father. But her father said, 'Well, if they're not staying with us, they may not have a place to stay.' My mum told me how she was initially envious of the Egyptian refugees, people who had less than her but who, from her point of view, were 'taking things away' from her and the other kids in the family. All my mum could see was that she lived in a rickety, cramped, cold house with hardly any possessions and these people who were staying the night were taking something away from her. But later she went on to see the need that the immigrant family had.

Being able to see the big picture—to see that refugees are not taking something but, rather, are giving back to our community—is fundamental to the success of the Australian multicultural story. The great success of multiculturalism in Australia has been the way that suburban Australians have, without fuss, accepted successive waves of new migrants into our neighbourhoods. As a local member of parliament, one of the things I most enjoy is to stand in a school assembly—amidst children from all ancestries in the world—and sing with them those terrific lines from the national anthem: 'For those who've come across the seas/We've boundless plains to share'. Australia is a big country with a big heart. This bill reflects that fact. It harmonises our laws with our international responsibilities. It ensures we meet our moral obligations. It demonstrates that we in the Labor Party are committed to a humane and just approach to migration, and that we are not prepared to let the opposition's tub-thumping and incendiary rhetoric stand in the way of long-overdue reform.