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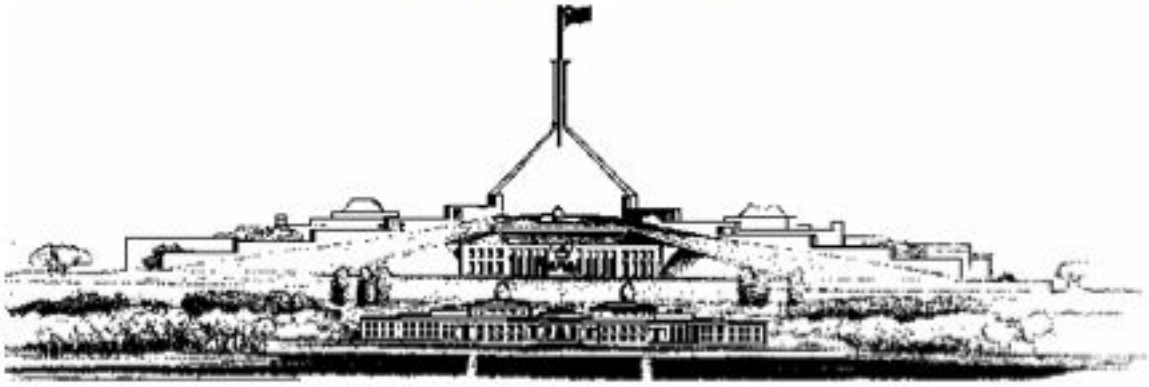

THE SENATE

BILLS

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

Second Reading

SPEECH

Tuesday, 28 October 2014

BY AUTHORITY OF THE SENATE

SPEECH

Date	Tuesday, 28 October 2014	**Source**	Senate
Page	7974	**Proof**	No
Questioner		**Responder**	
Speaker	Nash, Sen Fiona	**Question No.**	

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (18:04): I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The speech read as follows—

MIGRATION AND MARITIME POWERS LEGISLATION AMENDMENT
(RESOLVING THE ASYLUM LEGACY CASELOAD) BILL 2014

This Bill honours the Coalitions commitment to restore the full suite of border protection and immigration measures, abolished by the former Labor Government to stop the boats. The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 will amend the Migration Act 1958, the Migration Regulations 1994, the Maritime Powers Act 2013, and make minor changes to the Immigration (Guardianship of Children) Act 1946 and the Administrative Decisions (Judicial Review) Act 1977 to support the Government's key election commitments to stop the boats and resolve Labor's 30,000 legacy caseload. These measures are a necessary extension and consolidation of the Government's successful border protection policies and are part of a broad package of measures which will tackle the management of the backlog of illegal maritime arrivals known as IMAs and bring important enhancements to the integrity of Australia's protection programme.

The Government is committed to Australia's national security and economic prosperity in its efforts to combat the illegal and dangerous practice of people smuggling. These changes will further strengthen the Government's ability to manage illegal arrivals and strengthen public confidence in Australia's protection and migration programmes.

Specifically, the Bill reintroduces Temporary Protection visas, introduces Safe Haven Enterprise visas which is also a temporary visa, reinforces the Government's powers to undertake maritime turn backs and introduces rapid processing and streamlined review arrangements. The measures deliver on the Government's election commitment to reintroduce temporary protection visas and ensure that no IMA will be granted a permanent protection visa it will also ensure efficient processing of Labor's backlog of 30,000 asylum seekers, as promised.

The amendments to the Maritime Powers Act strengthen Australia's maritime enforcement framework and the ongoing conduct of border security and maritime enforcement operations. Enforced turn backs are a critical component of the Governments suite of border protection measures that have been so successful in stopping the boats. These measures affirm and strengthen the Government's ability to continue this success. This will help ensure that the tap stays off and we never return to the cost, chaos and tragedy that Labor and the Greens created.

The amendments in Schedule 1 of this Bill reinforce the Government's powers and support for our officers conducting maritime operations to stop people smuggling ventures at sea. They provide additional clarity and consistency in the powers to detain and move vessels and people. They further clarify the relationship between the Maritime Powers Act and other laws, and clearly state that ministers can give directions in respect of the exercise of maritime powers. Finally, as was Parliament's original intent, the amendments support our Navy and Customs personnel to continue to do their difficult jobs efficiently, effectively and safely on the water.

The amendments to the Maritime Powers Act are just one element of the Bill.

It has been a clear policy of this Government to ensure that those who flagrantly disregard our laws and arrive illegally in Australia are not rewarded with a permanent protection visa. The reintroduction of TPVs in Schedule 2 of the Bill is fundamental to the Government's key objectives to process the current backlog of IMA protection claimants. The Government is not resiling from providing protection, but rather, is providing temporary protection to those IMAs who are found to engage Australia's protection obligations. TPVs will be granted for a maximum of three years and will provide access to Medicare, social security benefits and work rights, as occurred under the Howard Government. TPVs will provide refugees with stability and a chance to get on with their lives, while at the same time guaranteeing that people smugglers do not have a 'permanent protection visa product' to sell to those who are thinking of travelling illegally to Australia.

However, consistent with this Government's principles of rewarding enterprise and its belief in a strong regional Australia, a new visa, the Safe Haven Enterprise Visa, will also be created. The Safe Haven Enterprise Visa will be will be open to applications by those who have been processed under the legacy caseload, and are found to be refugees. The SHEV will be an alternative temporary visa to the TPV, and encourages enterprise through earning and learning.

IMAs granted a SHEV will be required to confine themselves to designated regions (either a State or Territory government, local government, or employer can request to be designated), identified through a national self-nomination process. The visa will be valid for five years, and like the TPV will not include family reunion or a right to re-enter Australia. SHEV holders will be targeted to designated regions and encouraged to fill regional job vacancies and will have access to the same support arrangement as a TPV holder.

SHEV holders who have worked in Regional Australia without requiring access to income support for three and a half years will be able to apply, and if they meet eligibility requirements, be granted other onshore visas, for example family and skilled visas as well as temporary skilled and student visas. They will not be able to apply for a permanent protection visa. Consultation with State, Territories and Local Government will inform the details of the criteria for this visa. Details will be included in the Regulations subsequent to the passage of this Bill.

Schedule 2 of the Bill also includes the creation of authority in the Migration Act to make deeming regulations. The first time this authority is being used is to make regulations that deem IMAs who have a current on-hand permanent protection visa application to instead have applied for a Temporary Protection Visa. It also includes a minor amendment to the Migration Act to make clear that there may be multiple classes of Protection visas and to include an amended definition of Protection visas.

Schedule 3 of the Bill will create an express link between certain classes of visa that are provided for under the Migration Act (including protection visas) and the criteria prescribed under the Regulations in relation to those visas, and ensure that non-citizens can only apply for those visas in accordance with the criteria set out in both the Migration Act and in the Regulations.

The Government is of the view that a 'one size fits all' approach to responding to the spectrum of asylum claims made under Australia's protection framework is inconsistent with a robust protection system that promotes efficiency and integrity. It limits the Government's capacity to address and remove those found to have unmeritorious claims quickly while diverting resources away from those individuals with more complex claims. A new approach is warranted in the Australian context. The Fast Track Assessment Process introduced by Schedule 4 of this Bill will efficiently and effectively respond to unmeritorious claims for asylum and will replace access to the Refugee Review Tribunal with access to a new model of review, the Immigration Assessment Authority known as the IAA. These measures are specifically aimed at addressing the backlog of IMAs and will ensure their cases progress towards timely immigration outcomes.

All fast track applicants will have their protection claims fully assessed by my department under the Migration Act. However, it is the Government's policy that if fast track applicants present unmeritorious claims or have protection elsewhere, their cases will be channelled towards a direct immigration outcome rather than accessing merits review in order to prolong their stay in Australia. Such fast track applicants will be 'excluded fast track review applicants' and will not have access to any form of merits review.

The IAA will be established as a separate office of the Refugee Review Tribunal. Eligible fast track review applicants will have their refusal cases automatically referred to the IAA and will not have to apply for a review by it. The IAA's primary function will be to conduct a review 'on the papers' only considering the material which was before my department when it made its refusal decision under section 65 of the Migration Act.

The Government recognises that a review applicant may have a genuine reason for not presenting all relevant claims in the first instance. In limited circumstances, the IAA has a discretionary power to get new information where the information is considered to be relevant, however, the IAA is under no duty to accept or request new information or interview an applicant. In keeping with this model of limited review, the Immigration Assessment Authority will not accept or consider any new information presented at review by a fast track review applicant unless exceptional circumstances apply and the IAA is satisfied that the new information was not, and could not have been provided to the department before the section 65 decision was made.

This new approach to review will discourage asylum seekers who attempt to exploit the current review process by presenting manufactured claims or evidence to bolster their original unsuccessful claims only after they learn why they were not found to be refugees by the department. This behaviour has on numerous occasions led to considerable delay while new claims are explored.

These measures will support a robust and timely process, better prioritise and assess claims and afford a differentiated approach depending on the characteristics of the claims.

Effective tools must be available to ensure that those who do not engage our protection obligations can be removed from Australia. Prompt removal of failed asylum seekers from Australia supports the integrity of our protection programme and reduces the likelihood of applicants frustrating and delaying removal plans.

The current view put forward by some advocates that a person who simply claims to be a refugee is a refugee, despite multiple assessments to the contrary is actually undermining the Refugees Convention. Those not found to be refugees have no right to stay in Australia and must depart.

Schedule 5 of the Bill will make clear that the removal power is available independent of assessments of Australia's *non refoulement* obligations, where a non-citizen meets the circumstances specified in the express provisions of section 198 of the Migration Act. This change is in response to a series of Court decisions which have found that the Migration Act as a whole is designed to address Australia's *non refoulement* obligations, which has had the effect of limiting the availability of the removal powers. Asylum seekers will not be removed in breach of any *non refoulement* obligations identified in earlier processes. The Government is not seeking to avoid these obligations, rather it seeks to be able to effect removals in a timely manner once the assessment of the applicant's protection claims has been concluded.

Schedule 5 of the Bill will also create a new, independent and self-contained statutory refugee framework which articulates Australia's interpretation of its protection obligations under the Refugees Convention. The Government remains committed to ensuring it abides by its obligations in respect to the Refugees Convention and this change does not in any way compromise this commitment. The new statutory framework will enable Parliament to legislate its understanding of these obligations within certain sections of the Migration Act without referring directly to the Refugees Convention and not be subject to the interpretations of foreign courts or judicial bodies, which seek to expand the scope of the Refugees Convention. The new framework clearly sets out the criteria to be satisfied in order to meet the new statutory definition of a 'refugee' and the circumstances required for a person to be found to have a 'well-founded fear of persecution' including where they could take reasonable steps to modify their behaviour to avoid the persecution.

Let me be clear, the Government is not changing the risk threshold required for assessing whether a person has a well-founded fear of persecution. Under the new framework, refugee claims will continue to be assessed against the 'real chance' test, which has been the test adopted by successive Governments, in line with the High Court's decision in

Chan Yee Kin v Minister for Immigration and Ethnic Affairs [1989] HCA 62. The Bill also clarifies the interpretation of various protection related concepts such as:

The standard of effective State and non-State protection;

The test for assessing whether a person can relocate to another area of the receiving country; and

The definition of 'membership of a particular social group'.

The new framework will also clarify those grounds which exclude a person from meeting the definition of a refugee or which, upon a person satisfying the definition of a refugee render them ineligible for the grant of a Protection visa.

The amendments contained in Schedule 6 reinforce the Government's view that the children of IMAs, who are born in Australia, are included within the existing definition of unauthorised maritime arrival known as UMA in the Migration Act. This will ensure that, consistent with their parents, these children are subject to offshore processing and are unable to apply for a visa while they remain in Australia, unless I have personally intervened to allow a visa application.

The Government will also extend the definition of an UMA to the children of IMAs born in a regional processing country. This amendment supports the Government's intention that IMA families in regional processing countries should be treated consistently and that children born to an IMA ought not be treated separately from their family in the protection assessment process.

Amendments will also be made to the Migration Act to ensure provisions relating to 'transitory persons' operate consistently.

From time to time, successive governments have found it necessary to 'cap' certain classes of either the Migration or the Humanitarian visa programmes, in order to ensure that Government annual targets are not exceeded. This is a vital programme management tool, particularly when exceeding targets may resolve in budget overspends. As a result of a recent High Court judgement regarding my use of the 'cap' for the onshore component of the Humanitarian programme, it has been necessary to make minor amendments to the Migration Act. The amendments in Schedule 7 of the Bill will put it beyond doubt that I may 'cap' classes of the migration or humanitarian programme when necessary.

Schedule 7 will also repeal the 90-day time limit for deciding protection visa applications at both the primary and review stages of processing. The associated reporting requirements will also be repealed as they consume time and resources without adding value to overall Government objectives.

The Bill deserves the support of all parties. Just like our community continues to benefit significantly from the constant update in technology, the current management and assessment process of asylum seekers should equally be deserving of a commitment to innovation and improvement. The changes in this Bill will benefit the Australian community by providing us with the assurance of an effective, orderly and managed protection programme.

The Government has a clear mandate for these changes. There are no surprises here, this is the Government keeping its election commitments to stop the boats - upon which we are delivering - and resolve the legacy caseload, efficiently, quickly, fairly and with integrity.

I commend the Bill to the House.

Debate adjourned.