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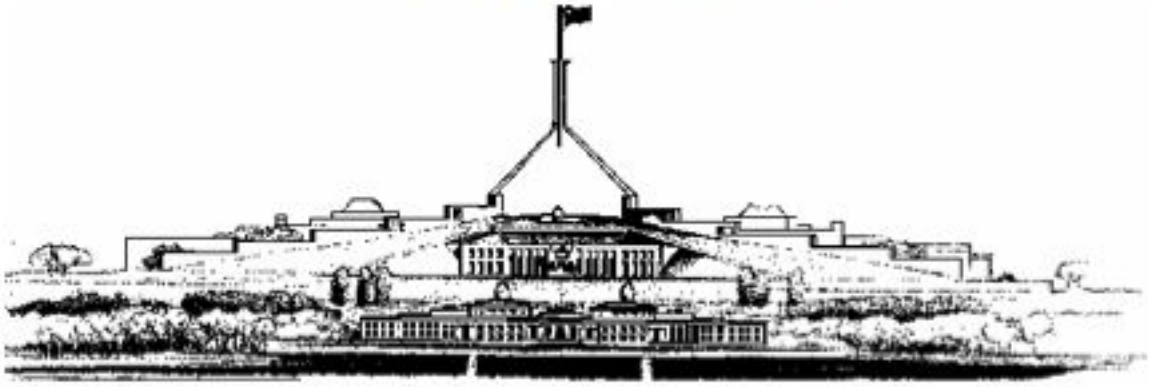

THE SENATE

MIGRATION AMENDMENT (DETENTION OF MINORS) BILL 2010

Second Reading

SPEECH

Thursday, 28 October 2010

BY AUTHORITY OF THE SENATE

SPEECH

Date	Thursday, 28 October 2010	**Source**	Senate
Page	1005	**Proof**	No
Questioner		**Responder**	
Speaker	Hanson-Young, Sen Sarah	**Question No.**	

Senator HANSON-YOUNG (South Australia) (12.00 am)—I move:

That this bill be now read a second time.

I seek leave to table an explanatory memorandum and to have the second reading speech incorporated in *Hansard*.

Leave granted.

The speech read as follows—

The Migration Amendment (Detention of Minors) Bill 2010 seeks to amend the Migration Act, to implement legal safeguards to protect children and young people from the harms of immigration detention. History has proven that we can't simply rely on the goodwill of a compassionate Federal minister.

Despite promising that detention will only be as a last resort, and for the shortest practicable period, the fact that more than 740 children are currently held in various facilities across the country highlights the problems of failing to codify this 2007 policy commitment of detention as a last resort within legislation.

Although many in the community had hoped that the election of a new Labor Government three years ago would bring about massive change in the way in which we treat asylum seekers in this country, unfortunately many of us were not only disappointed, but also witnessed a return to the scaremongering that existed in 2001 and the years that followed.

While the former Minister for Immigration embarked on some key reforms, in abolishing Temporary Protection Visas, detention debts, and removing the 45 day rule, the failure to amend the Migration Act to include some of the key policy promises from 2007 highlights just how important it is to provide genuine legal safeguards.

Numerous reports over the years have identified the mental health effects of detaining minors in immigration detention. In 2004, the Human Rights Commission released a report A Last Resort? A National Inquiry into Children in Immigration Detention, stating "Children in detention exhibited symptoms including bed wetting, sleep walking and night terrors. At the severe end of the spectrum, some children became mute, refused to eat and drink, made suicide attempts and began to self-harm, such as by cutting themselves. Some children also were not meeting their developmental milestones".

And although this report is more than six years old, the obvious long-term mental health impacts that detention has on young people is even more relevant now than ever before. It is clear that the current system is not only unworkable, but also severely damaging.

The Greens have long advocated for a more humane approach to the world's most vulnerable, particularly children and families.

While I acknowledge, and indeed congratulate, the recent announcement by the new Immigration Minister, Chris Bowen, to move currently detained children and their families out of immigration detention into community housing, we must ensure that this policy shift is enshrined in legislation by giving a long-term solution to an unacceptable regime.

History has shown us that we can't simply rely on the goodwill of a compassionate Federal minister. The fact that the Government is actually using existing powers that were put in place by the Howard Government in 2005 highlights how quickly moves to improve conditions for vulnerable asylum-seekers can be reversed.

The decision to remove children and unaccompanied minors and some family members from immigration detention is also a testament to the long public campaign by key NGOs and concerned members of the community.

This advocacy was key in bringing about change in 2005 under the Howard Government, and has undoubtedly played a key role in bringing about change in 2010.

Despite this positive step forward from the Gillard Government, the Greens remain concerned that this is merely a band-aid solution that fails to fully comply with our obligations under international law.

As a signatory to the 1951 Refugee Convention and its 1976 Protocol, Australia has an obligation to ensure that "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

While it is pleasing to see the Government finally recognise that children should not be detained in immigration detention, the fact that this decision remains one of policy, rather than law remains concerning, and must be corrected.

If we agree that children should not be subjected to immigration detention, we must have that enshrined within legislation – there should be no argument.

What the Bill does:

The Migration Amendment (Minors in Detention) Bill 2010 seeks to ensure that the decision to keep children and families out of immigration detention does not rely on the goodwill of the Minister of the day.

This Bill seeks to provide that children detained under the Migration Act 1958 not be held in immigration detention facilities but instead be placed, along with their immediate family members or guardians, in community residential housing.

In including the explicit reference to Article 4 and 37 of the Convention on the Rights of the Child, acts to strengthen and codify within the Migration Act, that minors must only be detained as a matter of last resort, not as a matter of first and only resort as is the current practice.

The Bill also seeks to expand the residence determination process, to ensure that the Minister, must, within 12 days, determine that a minor is to reside at a specified place within the community rather than being held in detention.

In expanding the residence determination section, this Bill seeks to appoint a guardian to advocate for the best interests of the minor. This is a particularly important point, when currently the Minister is both the perceived "detainer" and "guardian" of unaccompanied minors.

It is clear that the issue of asylum seekers, particularly children and their families, is an emotive one, but what we need to see from our political leaders, is leadership and courage not scaremongering and hysteria. We know from the experience from other countries, that there are more humane alternatives available for community-based support for asylum seekers.

Spain legislatively exempts minors from immigration detention (unless the parents who are also detained request to be housed in an appropriate facility together), while Canada and New Zealand make special provision for only detaining minors as a last resort.

While the Greens recognise the need to assess the claims of asylum-seekers, we do not believe that we should be treating these people as criminals. It is not, and never has been, illegal to seek asylum in this country, and yet, this very fact has been conveniently ignored by many seeking to score cheap political points.

We must remember that more than 92% of all children arriving by boat since 1999 have been recognised as genuine refugees.

It is time to get real about the damage these policies are doing to vulnerable and innocent children. We have a duty to ensure they receive fair and humane treatment. Let's turn the page forever on detaining children in Australia.

I commend this Bill to the Senate.

Senator HANSON-YOUNG—I seek leave to continue my remarks later.

Leave granted; debate adjourned.