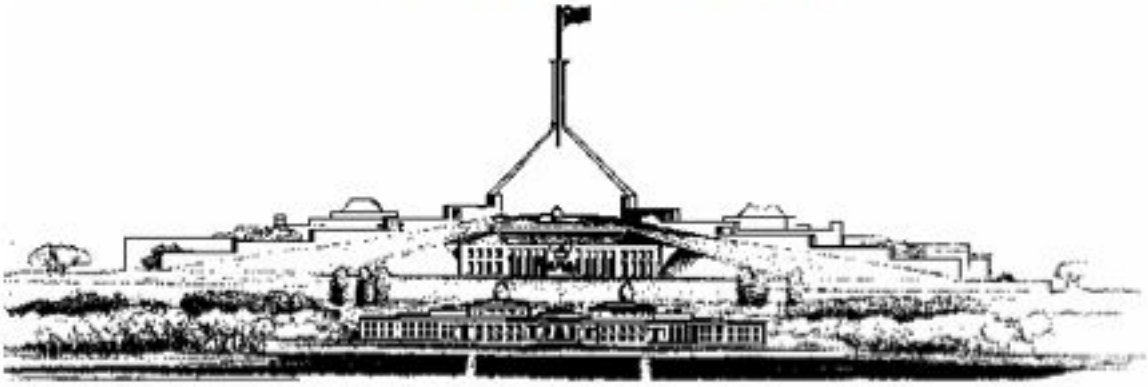
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

MIGRATION AMENDMENT (DETENTION REFORM AND PROCEDURAL FAIRNESS) BILL 2010

Second Reading

SPEECH

Thursday, 18 November 2010

BY AUTHORITY OF THE SENATE

SPEECH

Date	Thursday, 18 November 2010	**Source**	Senate
Page	1565	**Proof**	No
Questioner		**Responder**	
Speaker	Hanson-Young, Sen Sarah	**Question No.**	

Senator HANSON-YOUNG (South Australia) (9.54 am)—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—

The Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010 seeks to improve the way in which the Migration Act currently operates, by ending offshore processing and the excision policy; ensuring that detention is only used as a last resort; ending indefinite and long-term detention that is the legacy of mandatory detention; and introducing a system of judicial review of detention beyond 30 days.

While immigration detention is not prohibited by international law, several international treaties to which Australia is a party impose limitations on the scope of acceptable immigration detention arrangements. This Bill ensures that our obligations as signatories to the Universal Declaration on Human Rights, International Covenant on Civil and Political Rights (ICCPR), Convention Relating the Status of Refugees, and the Convention against Torture (CAT) are upheld and reflected within our domestic law.

As a signatory to the 1951 United Nations Geneva Convention on Refugees, and a country that considers itself compassionate and a champion of the 'fair go', we must uphold our international obligations and responsibilities and stop the demonisation of the small number of people that arrive in this country seeking protection.

After almost a decade of defending its support of the removal of legal rights for asylum-seekers, the Federal Government now has a unique opportunity to leave the Howard Government's legacy of indefinite, arbitrary detention behind, once and for all.

Last week, the High Court of Australia unanimously ruled that two Sri Lankan asylum seekers were denied procedural fairness in the review of their claims merely because they arrived on an excised offshore territory. The High Court found that any review of a refugee status assessment must be bound by the provisions of the Migration Act and the decisions of Australian courts.

The most important point of this decision is that if Australia is going to deny people the right to seek protection or to get a protection visa in this country, then the process by which that is decided has to be a fair process.

The decision has confirmed that the Greens were always correct in our opposition to creating two sets of rights, one for asylum-seekers who arrive by plane and another for those who arrive by boat.

While the decision did not call into question the validity of offshore processing, it confirmed that all asylum seekers must be entitled to the same legal treatment, and that life-and-death decisions about their fate cannot be made without proper legal scrutiny.

This decision has ultimately provided the Government with the opportunity to truly reform the way in which we assess people's claims for asylum. The Greens maintain that excision, offshore processing, and mandatory and indefinite detention are inconsistent with Australia's international human rights obligations and should be abolished. This Bill seeks to rectify these long-standing damaging policies, by replacing it with a system that treats all asylum seekers equally.

The offshore detention of asylum seekers in a zone excised from mainland Australia has been one of the most damaging aspects to our international standing. The political bickering between the Government and Coalition over the management of asylum seekers on Christmas Island obscures the fact that this policy is a breach of Australia's international obligations to under the Refugee Convention.

The old parties are too frightened to tell the truth to the Australian public about asylum-seekers, because they fear being labelled "not tough enough". As long as there are people fleeing persecution and torture they will continue to seek protection. We must accept that fleeing persecution is not an orderly process by its very nature, and therefore we need a system that acknowledges this and still protects people, shows compassion, and gives the worlds most vulnerable people a fair go.

What we need is a policy that upholds Australia's commitments to international law and human rights.

According to a recent Red Cross Survey, eighty-three per cent of Australians agree that those fleeing persecution should be able to take refuge in another country. So why are the major parties pandering to the small minority in Australia?

The Government has been repeatedly warned about the dangers that prolonged or indefinite detention can have on the mental health of asylum seekers, yet it persists in a detention policy that is anything but humane.

The continued commitment to mandatory detention and offshore processing shows that they have learned nothing from Australia's recent history.

In fact, the Government never actually legislated for their 2007 election promise of a more humane approach to immigration detention.

We know that detention is no longer used as a last resort, and the result of the suspension of asylum claims for Afghans and Sri Lankans has seen a backlog of cases clog the system, inevitably witnessing a return to the cruel and inhumane policy of indefinite detention.

Furthermore, the Government's blatant rejection of a charter of rights in Australia only reinforces the need for an independent check on detention decisions.

It is impossible to restore public faith in Australia's immigration detention system while the right to seek prompt, independent and effective review of detention decisions is denied.

Judicial review will not only challenge the presumption of detention as the first and only resort, but also introduce a legal framework that the High Court of Australia has itself said needs to happen.

The measures contained within this Bill, will:

- Repeal the excision policy;
- Ensure that detention is only used as a measure of last resort, thus ending the policy of mandatory detention;
- End indefinite and long-term detention;
- Restore asylum seekers rights to procedural fairness; and
- Introduce a system of judicial review of detention beyond 30 days.

We want a fair and just immigration system that upholds Australia's commitment to international law and human rights.

We believe refugees should be treated compassionately and oppose an overly-politicised approach that demonises asylum seekers with the cruel, expensive and unnecessary policies of mandatory detention and offshore processing.

It is time to stop the scaremongering, and work together towards a fairer, more compassionate Australia, with a system that deals with the needs of asylum seekers in a practical, humane and long-term manner.

A tri-partisan compact between the parties and the people, which takes the heat out of the debate, and instead puts our responsibilities and values of fairness and human rights at the centre of a long-term and practical solution, is essential. And this solution must be an Australian solution.

I commend this Bill to the Senate.

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

Leave granted; debate adjourned.