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PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PROOF

**ANTI-PEOPLE SMUGGLING AND
OTHER MEASURES BILL 2010**

Second Reading

SPEECH

Wednesday, 17 March 2010

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Questioner
Speaker Sidebottom, Sid, MP

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Mr SIDEBOTTOM (Braddon) (11.37 am)—I am pleased to speak on the Anti-People Smuggling and Other Measures Bill 2010 and to support it. Until relatively recently, Australia had a bipartisan approach, in effect, to the treatment of refugees both onshore and offshore. As of 2001, in particular, those opposite, who were then in government, have used this for overtly political reasons, realising that the whole issue of immigration, particularly what is deemed to be unlawful immigration, has always been a psychological lever in Australia's culture. Strangely enough, it is a culture that, apart from our Indigenous population, is a totally migratory population from our origins. So there has always been this psychological factor of the outsider in Australia if you do not come via the welcome mat that we set out—finely attuned and attested to by the former Prime Minister in 2001.

What that has led to—and it is clearly indicated by many on the other side—is a divisive debate in this country. What is often forgotten, apart from the sheer misery, pain and persecution of those who seek asylum in this country, is that we are signatories to international conventions which obligate us to treat people fairly and humanely when they arrive at our shores or within our jurisdiction and under our sovereignty. But, if you listen to some members on the other side saying, 'Turn the boats back,' you hear language that not only defies practicality but defies our obligations as a civilised nation. The simple fact is that, yes, you can point out times in our recent history when the numbers of people seeking asylum, particularly boat people—most come by air, which is hardly ever mentioned in this place—go up and down. The simple fact is that they go up and down according to what we euphemistically call push factors. It essentially means that there are areas of trouble in our neighbourhood that force people, through persecution, to seek asylum elsewhere. Anyone with the means and the will will seek asylum in those places that are most safe. Anyone who is a parent or a guardian would understand that. You would do anything to find safety for your family and your children. It is natural, it is human, and yet many condemn people who would seek to do that.

We hear people say, 'They're jumping the queue.' What queue? Where are these queues—nicely ordered and lined up? There are something like 42 million people in camps throughout our region and throughout the world who are displaced and seeking asylum. What

queue? Where are these magical queues? Of course there are people who will make formal application, and this country is comparatively generous in taking on humanitarian refugees, but this talk of queues and people jumping them is absolute, utter nonsense. In times of intense conflict—more recently in our region in Sri Lanka, in particular, and in Afghanistan—we know people are suffering and are displaced and that they will seek asylum and do whatever they can to get to safe places such as Australia. When they enter our jurisdiction and our seas, we are obligated as a humane nation and as part of the international community to take these people and to process them humanely.

It is said by those opposite citing all the figures that, under the Howard regime—that tough old regime with the Pacific solution, Christmas Island and excising—the boats stopped coming. Okay, boats may have diminished in number but that does not mean it is cause and effect. When I was a history student there was a way of looking at history which was called the post hoc ergo propter hoc fallacy—that because one thing happens and then something else happens it must have been caused by the first. That is nonsense, but that is what they are perpetrating on the other side. The reason the numbers declined is that the points of conflict were diminished, but now the points of conflict are rising, and have risen more recently, and the numbers are increasing. It is a natural historical fact. Those on the other side would have us believe that it is not the push factors, it is not the conflict and it is not the persecution that surrounds us. Jack Hill the blind miner needs only to turn beyond the commercial channels to a bit of international news to see the misery and torment that goes on around us and to put himself in the position of saying, 'What would I do about that?' Well, people are doing something about it now, but you would have the mob on the other side saying that it is not those factors that are causing it, that what is causing it are the pull factors and that we have softened our stance on refugees. They say that the people smugglers and those people they are servicing are looking through our newspapers daily, running their fingers down the columns and looking at the changes in legislation and saying: 'Ah, there's a loophole. The pull factors have softened so we will increase our trade over there.' That is absolute nonsense and anyone who really thinks about this for more than a couple of minutes can work that out.

What I find very interesting, and it is not mentioned by those on the other side, is that when our legislation came into place to modify the system—not weaken it but modify it to make it more humane—those on the other side accepted it and voted for it. Their members as part of committees did reports on this and all of them supported it. But now they do not; now it is the problem. Basic logic says that is a nonsense. This government has gone about creating a comprehensive program to make our response humane but at the same time make it firm. We cannot do anything unless we have the assistance of our neighbours. The turnstile is not here; it is elsewhere. We have been working progressively since 2008 to create a whole-of-government national and international framework to make this work better. Many resources are being put into it.

Those on the other side say they accept this legislation but claim it will do nothing to solve the real problem. What we ought to do to solve the real problem is to stop war and stop misery. We also need to do more in our region to support our neighbours. And we had better stop the effects of climate change, because if you think persecution has been the cause of a great proportion of those seeking asylum today, when we see the effects of environmental refugees throughout the world, we will really know something. This business of blaming us for an increase in the number of people seeking asylum here is a nonsense. We need to stop war, we need to stop persecution and we need to stop climate change and the negative consequences of that.

This legislation seeks to tackle people smuggling more comprehensively. Some people argue that people smugglers might be involved in a terrible trade, but at least they are helping people to do something to offset their persecution. I do not support that, but the trade of people smuggling exists because there is a need. We have to do something about these people smugglers and particularly those who prey on the vulnerability of those who are persecuted. That is what this legislation seeks to do.

I find it interesting that the 2004 United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, to which Australia is a party, defines smuggling of migrants in article 3(a) as:

... the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident ...

I understand that there have been 88 arrests and 25 convictions since September 2008 in Australia—that is, convicted people smugglers, crew members on vessels, who have received between five and six years imprisonment. We have been acting on this and we

are seeking to strengthen our activities. How are we going about this? The legislation before us seeks to establish a new offence of providing material support and resources towards a people-smuggling venture in the Migration Act and the Criminal Code. It is worth noting what that means. According to the explanatory memorandum, the offence will apply to a person:

... if that person provides material support or resources to another person or organisation and the provision of the support or resources aids the commission of the offence of people smuggling.

The second reading speech says:

The offence applies if a person is reckless as to whether the money or resources they provide will be used in, or to assist, a people-smuggling venture.

So it attacks so-called ignorance in behaviour. It continues:

It will not apply to a person who pays smugglers to facilitate their own passage to Australia or who pays for a family member on the same venture.

According to the explanatory memorandum:

The maximum penalty for this offence will be imprisonment for 10 years or 1,000 penalty units (\$110,000), or both.

Prescribing a maximum penalty still allows judicial discretion to take account of the circumstances of the case. The second thing it seeks to do is important and it is something that former legislation, particularly by those opposite, did not do. I do not want to go tit for tat on that stuff. All frameworks evolve, no matter who is in government, and that is what this legislation seeks to do. That is why those opposite are willing to support this legislation. The legislation seeks to harmonise people-smuggling offences between the Migration Act and the Criminal Code to strengthen the criminal framework and for greater consistency. It may or may not be surprising to learn that harmonisation of legislation, particularly acts, in our system is an ongoing process because in some senses they contradict each other. This seeks to harmonise acts so they will working with the same intent and for the same purposes and not working at cross-purposes.

A third element of the legislation is to extend the mandatory minimum penalties in the Migration Act. This, of course, is to strengthen this to make it harsher in terms of and in relation to the penalties that are permitted and to improve the capacity for law enforcement and national security agencies to tackle their jobs not just in this but particularly in relation to people smuggling.

People smuggling is a serious and organised crime. We know it involves criminal syndicates and they

rely on a network of people associated with them. Targeting the organisers and finances of people-smuggling operations is an important element of a strong anti-people-smuggling framework and that is what this legislation seeks to do on a whole-of-government basis.

Before I finish, I would like to return, if I may, to this issue of context and balance. You have those on the other side, and some of the conservative press, without a doubt, day after day putting the story out that we are being inundated by a peril. Some of the reporting is absolutely disgraceful and atrocious, happily taken up by many on the other side. I notice the member for Berowra—the so-called ‘father of the House’—is in a very sedentary mode at the moment. But he gets highly excited—in fact he bounces in his seat—as soon as you mention the question of boat people and refugees. He starts frothing at the mouth, recalling his enormous record of making the lives of those seeking asylum more miserable. I find it a strange thing to see, and a little disheartening for someone who has been in this House for so long.

Let me just remind you, Mr Deputy Speaker, of some of the contextual facts that we should take into account when we consider this. I will quote from a new book, which was delivered to all of us just recently—*Future Justice* edited by Helen Sykes—from a section on refugees and human rights by Julian Burnside. You can imagine some on the other side would groan when they hear the name ‘Burnside’, but imagine having that record of humanitarian concern in your career and your lifetime. It is fantastic:

Looking at global refugee flows misses the point that very few of them come here.

Very few refugees come here:

If numbers are a concern, here are some to consider:

Australia’s population is 22 million. The number of visitors arriving in Australia each year (for tourism, business etc) is 4.5 million. The number of permanent new immigrants each year is 185,000. The refugee/humanitarian quota per year is 13,500. The number of asylum seekers who come here by air each year—

air!—

... is 5000.

In 2009, for example, the number of asylum seekers who came to Australia by boat was approximately 2,800, or the equivalent of five days migration intake. Yet, if you believe the conservative press, if you believe those opposite and if you take any notice of the frothing of the member for Berowra, you would swear we were being inundated and that this country is at risk. It is an absolute nonsense.

This government is working cooperatively with its neighbours, it has a whole-of-government approach and it has put considerable resources into creating a framework where we are fair, humane and carrying out our international obligations. I am very proud to support this legislation.