



## MIGRATION AMENDMENT (DESIGNATED ANAUTHORISED ARRIVALS) BILL 2006

### Second Reading

### 9 AUGUST 2006

Ms GRIERSON (Newcastle) (6.57 p.m.)—I rise to speak on the [Migration Amendment \(Designated Unauthorised Arrivals\) Bill 2006](#). At the very outset I want to put on the record my absolute opposition to this legislation. This legislation is illogical and it is inhumane. It is illogical because it actually removes Australia from Australia's migration zone. It is inhumane because it actually puts children back into detention centres 12 months after this parliament voted to get them out. It is also inhumane because it says that Australia does not have any human rights obligations other than the remote processing of people seeking asylum. This is such a lack of compassion from a government that has its fingerprints on the human fallout from the escalating Middle East crisis, the continuing hostilities in Iraq and Afghanistan, and the ever-present war on terrorism. This is the legacy for all of us of being a member of the coalition of the willing—willing to be an aggressor and add to the ethnic and territorial tensions that rack the Middle East and threaten the relationship between two great cultural civilisations: Islam and Christianity.

This is appallingly bad policy that turns its back on our global responsibility to show integrity and leadership in a troubled world. No amount of amendment can fix this fundamentally flawed legislation, which in fact is a source of great shame to many of us here on both sides of the House. It is worth pointing out that only 11 of the 87 members on the other side will even stand to speak on this legislation. Perhaps they do not want their words on the public record for their constituents to read. The limited changes proposed by the Prime Minister to try to win over his backbench are not nearly enough, because the bill's intentions and outcomes remain the same. It excises the Australian mainland and Tasmania from Australia's migration zone for people arriving by sea without a visa.

So people arriving by sea without a visa on the Australian mainland will be designated unauthorised arrivals. These people may then be removed to a declared country outside Australia for processing of their refugee claims, where of course they can be detained indefinitely. We will pay the bills, but we do not wish to come face to face with any asylum seekers, apparently. These people will also be prohibited from instigating any legal or appeal proceedings in Australia following any determination of their protection claims. In fact, they will not be able to appeal to the Refugee Review Tribunal from Nauru either. In short, anyone arriving in Australia by boat without a visa will be shipped off to Nauru to have their asylum claim heard and they will not have any recourse to any kind of appeal in this country. They will be

someone else's problem. And because they are someone else's problem they will be beyond the reach or protection of Australian law.

This will be the undoing of the significant changes the government was forced into last year, when its immigration policy was brought closer to Labor's. The government's backflip means that children will now go back into detention centres, but technically not on our soil. It means an end to proper mental health care for asylum seekers and a continuation of the despair of indefinite detention. This would be a terrible outcome for people seeking asylum and for good people in this country as well. It fails the test of fairness and in all probability fails to meet our obligations under the UN Convention on the Status of Refugees. As the United Nations High Commissioner for Refugees said in April this year:

*It would be an unfortunate precedent, being for the first time, to our knowledge, that a country with a fully functioning and credible asylum system, in the absence of anything approximating a mass influx, decides to transfer elsewhere the responsibility to handle claims made actually on the territory of the state.*

No other country in the world has tried to shirk its responsibilities in this way. Recently I had the great privilege of joining the Speaker's delegation to Malaysia. Whilst there we visited the UNHCR in Kuala Lumpur and there we met very dedicated people who attempt to process and assist up to 300 asylum seekers every day. Those people are fleeing places like Burma and other countries in our region where oppression or ethnic persecution is the norm. The Malaysian government accept these people into their community and allow them to work as long as they cause no trouble. Although they have few rights and limited access to government services, at least they are not placed into detention centres and they are not turned away. It certainly makes us look absolutely miserable, mean and very much out of touch with the needs of our region.

Over the past four years arrivals here by boat accounted for only about three to four per cent of all unauthorised arrivals in Australia. The hysteria whipped up by the Howard government about these arrivals during and after the 'Tampa election' has been out of all proportion to the problem. Consider that almost 50,000 people were in Australia illegally in the 2004-05 calendar year. Most of these were people who were overstaying their visitor visas for up to a year. Where is the hysteria from the Howard government about those 50,000 people? There is very little. Instead it is being directed at the 400-odd people on board the *Tampa* and the 43 West Papuan asylum seekers in their canoe.

This legislation is just a continuation of that same inflammatory hysteria. It is a rerun of *Tampa* and a rerun of the discredited Pacific solution, which has cost the Australian taxpayer between \$3 million and \$4 million a month since its inception in 2001. That is \$240 million the government has spent to keep asylum seekers out of sight and out of mind. The cost of maintaining our facilities on Nauru is now about \$1 million a month, even though only two people remain on the island at present, sadly forgotten.

Let us be clear about this offshore processing. It completely takes people outside of our nation's legal system. It gives them no recourse under our laws and we cannot check on any complaints or appeals about the detention process in these foreign

places. So basically anything can happen. Any human right can be breached. Any abuse of people, of children, can happen, and we just look the other way. What a great nation!

This is just what the US has done with its Guantanamo Bay prison camp. It is run by the US, but those who are imprisoned there do not have the rights or protections of US law. That was the intent, of course, but now the American court system has tried to drag the government back to the proper operation of the rule of law and its judicial system, finding that the inmates are entitled to a proper trial, not some military kangaroo court style commission.

Sadly, this country has been quite complicit in that subversion of the law by the US government by leaving an Australian citizen, David Hicks, in that prison camp. An Australian citizen is being held in a legal limbo outside of the US legal system, outside of the Australian system, and his government has not lifted a finger to get him out. The British government has taken all its citizens back to face trial in their own country. But in June, three prisoners at Guantanamo Bay committed suicide out of desperation at being held in detention indefinitely without charge. I do not think many media actually attend at Nauru, but certainly they do keep an eye on Guantanamo Bay. The response to those suicides, you will recall, by the US Deputy Assistant Secretary of State almost defies belief. Ms Graffy declared that the suicides were 'a good PR move for the jihadi cause'. Unfortunately, that sort of completely insensitive and inhumane comment is one that we would never expect to hear from leaders of any country, but it is one that succeeds when you detain people outside your own country, outside your own legal system, when you dehumanise them, when they are not people but just a part of a process. Of course, you hope the public will forget them too.

That is just what this Howard government tries to do by dehumanising asylum seekers in this country, first by locking them up in the desert and now by locking them up offshore. When the 43 West Papuan asylum seekers landed, the Howard government desperately tried to prevent them from being photographed. It wants asylum seekers to remain faceless and forgotten—not normal people; not real people; not people with the same emotions, the same fears, the same fears for their loved ones, the same aspirations for the people they care about, the same aspirations we all share as human beings.

Even before those suicides in Guantanamo Bay, Britain's Attorney-General had been calling for it to be shut down completely. If only we had a government that perhaps had the same courage. But, instead, our Prime Minister goes off to Washington certainly to tell George Bush that everything is fine: 'Despite \$A2 billion spent, five years there and thousands of casualties, everything is going well in Iraq and it certainly is not escalating the desire of people to flee these very unstable places.' That sort of disregard for legal rights and processes may get our Prime Minister invited to cocktail parties in Washington, but it does nothing for our reputation and it does nothing for our human rights reputation around the world.

This so-called border protection legislation before us today also does nothing for our reputation. While the Prime Minister kowtows to the United States on Guantanamo Bay, now he kowtows to Indonesia on asylum seekers. The impetus for this legislation is not border protection. The impetus for this legislation is appeasing

Indonesia over the West Papuan asylum seekers who landed in this country earlier this year claiming asylum from human rights infringements by the Indonesian government.

According to the law, the 43 Papuan asylum seekers who landed on Cape York in February were processed on Australian soil and under Australian law on Christmas Island. After an independent process, free from political interference, 42 of those asylum seekers were granted temporary protection visas, allowing them to stay in Australia for up to three years. Last week, the final asylum seeker was granted a TPV after the Refugee Review Tribunal looked into his case. That is how the system is supposed to work. Australia has a responsibility to examine the claims of people who arrive here and, if they are found to be genuine refugees, Australia has a responsibility to provide them with asylum. But of course Indonesia was not happy because Australian law found that these people were genuine refugees fleeing genuine persecution in their homeland. You will recall that Indonesia withdrew its ambassador to Australia and pulled out of joint military exercises. That was on 25 March. Less than a month later, the Minister for Immigration and Multicultural Affairs, Senator Vanstone, announced this new policy. This is a new low, even for this government, which has outsourced its foreign policy to the United States, its trade policy to Saddam Hussein and its health policy to the religious right. I suppose it used to outsource its immigration policy to Pauline Hanson; now it outsources it to Indonesia.

Instead of rolling over on this, Australia should have stood up and been counted as a good citizen in our region. It should have looked beyond the political pressure it was under from Indonesia. It should have looked at the conditions in West Papua that caused these people to seek asylum and it should have entered into concerted diplomacy to be a part of the regional solutions. We should be working with our regional neighbours, particularly Indonesia, to improve the conditions of life for the West Papuan people so that they do not feel that they have to seek asylum. We should encourage Indonesia to address the reasons why people are fleeing in the first place.

This legislation before the House today is a rather cynical political solution to a terrible humanitarian situation and the Australian people are completely opposed to the way the Howard government has handled it. A poll in June found that three-quarters of Australians do not believe we should change our immigration policy to improve relations with Indonesia. In fact, I think the GetUp web site has 87,000 signatures, and I hope those 60 or 70 members opposite who were not game to speak on this legislation remember that.

The Australian people do not want this legislation. They are awake to the fact that it is heartless and it is going too far, just as they realise the extreme Howard government is going too far with Work Choices and their lives. Like the Australian people, I completely oppose the shipping of asylum seekers to other countries for detention and I completely oppose the Howard government's weak-kneed decision to take this course of action. But some might argue that sending asylum seekers to languish on Nauru would actually be more humane than having them fall into the clutches of the Australian immigration department. After all, DIMA is the department which wrongfully locked up Cornelia Rau, Vivian Solon and possibly 200 others. The government tried to hide these people behind a bureaucratic curtain until exposed by

public advocates, journalists and opposition members of parliament. Let us not forget that, after public outcry, the Palmer inquiry investigated DIMA and found it to be:

*... overly self-protective and defensive, a culture largely unwilling to challenge organisational norms or to engage in self-criticism or analysis.*

Clearly, things have not got much better. In June it was revealed that a further 26 Australian citizens had been unlawfully detained. Allegations of rape in detention centres have also been made since that time. Last year, the Australian National Audit Office also released its damning report into the management of detention centre contracts, finding that DIMA had no idea whether the Australian taxpayer was receiving value for money for contracts, worth around \$120 million per year, with Global Solutions. Worse, it found that, under the contracts, DIMA have no way of knowing whether the basic needs of detainees are being met or their human rights are being respected. The Joint Committee of Public Accounts and Audit is currently conducting its review of that report and will report its findings to the parliament.

Recently, DIMA has spent a lot of money trying to change its self-protective and defensive culture, but nothing of substance will change unless there is a change of attitude from its ministerial masters. As the saying goes: 'the fish rots from the head.' The culture that permeates Australia's immigration department springs from the Prime Minister's infamous statement:

*We will decide who comes into this country and under what conditions.*

It perhaps comes from the Treasurer's statement:

*Before becoming an Australian, you will be asked to subscribe to certain values. If you have strong objections to those values, don't come to Australia.*

You have to ask two big questions out of those two statements. Who is the 'we' that the Prime Minister is referring to? Is it his government, is it the parliament, is it DIMA and their officers or is it, as it seems now, the President of Indonesia, when it should always be the Australian people? What are the 'certain values' that the Treasurer refers to? Who decides this? I certainly would not want this government to decide when talking about moral values and moral autonomy. Political expediency has no part in that and this government has always demonstrated that it will put political expediency before moral values. Any definition of our values would need to acknowledge that we are a wonderfully pluralistic, multicultural society, that our values of nationhood would see us committing as a global and regional neighbour to fulfilling our humanitarian and legal duties. But this government is rarely true to those values.

Last week the United Nations Human Rights Committee found that the Howard government's immigration detention regime breaches one of the most fundamental of all human rights obligations: the right to be protected from arbitrary imprisonment. This is the fifth adverse finding against Australia's detention regime in less than 10 years.

Also last week, the government floated—pardon the pun—another one of its punitive schemes: to purchase some kind of armed detention boat to serve as a prison for illegal fishermen. We used to think the Prime Minister was taking us back to the fifties; this would take us all the way back to the prison hulks of the convict era. While John Howard's floating prison might be odious—even ludicrous—there was another report this week that was deadly serious. The Edmund Rice Centre found that nine rejected asylum seekers are believed to have been killed after being forcibly removed to Afghanistan. It seems to me that, in these trouble spots, there should be a moratorium for people who are held in Australia at the moment and seeking to have their claims for asylum resolved. One wonders how you can send them back to places where we are deploying more troops. The minister needs to investigate these reports immediately, because, if the government is determined to pass this legislation, we are going to see even more asylum seekers sent away—possibly into dangerous conditions in their country of origin.

We must not pass these laws. We do not want kids back in detention, we do not want indefinite detention, we do not want asylum seekers missing out on mental health care and basic human kindness, and we do not want legal oversight to disappear over the horizon as asylum seekers are shipped off to Nauru. The government backbenchers who were brave enough to stand up to the Prime Minister last year went through a lot of pain to provide some semblance of humanity in our detention system, and the Australian people have followed that lead. I hope it can be assured that this dreadful legislation fails in the House. I congratulate the member for Pearce, the member for Cook, the member for McMillan and the member for Kooyong, who have led the way in standing courageously for what is morally right. I hope we no longer go down the inhumane and uncivilised path of putting asylum seekers out of sight, out of mind and out of the responsibility of the prosperous, democratic nation that we belong to—a nation that is capable of generosity, compassion, integrity and international leadership. I oppose this legislation and I am absolutely ashamed that it has been put before the Australian parliament and the Australian people.