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Wednesday, 30 June 1999

**MIGRATION LEGISLATION
AMENDMENT BILL (No. 1) 1999**

First Reading

Bill received from the Senate, and read a first time.

Second Reading

Mr SLIPPER (Fisher—Parliamentary Secretary to the Minister for Finance and Administration) (7.29 p.m.)—I move:

That the bill be now read a second time.

The purpose of this bill is to amend the Migration Act to clarify the rights of certain people who are held in immigration detention.

The area of government administration dealing with unauthorised arrivals and detention has been the subject of protracted litigation over recent years. It is, therefore, important that we have clearly understood processes supported by clear and unambiguous legislation in order to avoid confusion of the government's intent in this area.

Certain interest groups have always argued that all unlawful non-citizens should, on arrival in Australia, immediately be offered access to legal advice, even where they do not request it. Such an approach would, however, have the effect of ensuring that all unlawful non-citizens, regardless of their reason for coming to Australia, could invoke lengthy and expensive processing. This is especially of concern given the large numbers of unauthorised arrivals in recent years.

Debate interrupted; adjournment proposed and negatived.

Mr SLIPPER—This bill ensures that parliament's intention in relation to the management of unauthorised arrivals in immigration detention, as reflected by section 256 of the Migration Act, cannot be subverted through the use of the Human Rights and Equal Opportunity Commission Act 1986 or the Ombudsman Act 1976.

The bill is largely the same as one that was before the Senate in the last parliament.

The Senate has, however, amended the bill to strengthen offence provisions in the Migration Act dealing with the increasing problem of people trafficking.

The bill brings the penalty for single instances of people trafficking into line with the criminal sanctions imposed for similar forms of migration fraud and introduce a more severe penalty of 20 years imprisonment or 2,000 penalty units, or both, for the trafficking of groups of five or more people. This penalty recognises that organised crime groups are involved in people trafficking, and the penalty reflects the seriousness of the offence.

These new provisions are primarily aimed at those who profit from people trafficking—those who, for a fee, organise individuals or groups to enter Australia illegally.

Refugees are not at risk from these provisions. As a signatory to the refugees convention, the Australian government will ensure that refugees are not subjected to penalties on account of illegal entry or presence in Australia as first refuge.

Further to the increase in penalties proposed by the bill, on 27 June the Prime Minister announced a commitment of \$124 million to a four-year program of comprehensive improvement to coastal surveillance which will strengthen Australia's capacity to detect and deter illegal arrivals.

The government is committed to protecting the integrity of the nation's borders and to stopping the work of people traffickers who think nothing of exploiting people with the false promise of entry into Australia.

I commend the bill to the House and present the explanatory memorandum.

Mr SCIACCA (Bowman) (7.33 p.m.)—In speaking about the Migration Legislation Amendment Bill (No. 1) 1999 before the House today and the amendments to the Migration Act 1958 to cater for public smugglers, let me first of all reaffirm the bipartisan spirit that the Labor Party have committed themselves to in this portfolio. When the Labor Party recognise that a piece of legislation is valid, just and for the common good of the Australian people, we will always support and champion it. However, when a bill is unfair, narrow in its purpose and application and ideologically unsound, we will fight it and fight those who promote it. I

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refer, of course, to the judicial review legislation.

Fortunately, this bill before us today falls into the former category. Both the principal bill for discussion today, the Migration Legislation Amendment Bill (No. 1) 1999, and the amendments to the principal act to deter people smuggling operations will go at least some way towards rectifying problems which over time have become more and more serious and have threatened the integrity of our judicial appeals system and the integrity of our national border. The Migration Legislation Amendment Bill (No. 1) has been now around for some three years and its intent is to impose specific limits to the operation of sections of the Human Rights and Equal Opportunity Act 1986 and Ombudsman Act 1976.

More specifically, the intended effect of the legislation is to ensure that, while the right to confidential access to legal advice is maintained for those who are detained in the various immigration centres around the country, it is nevertheless strictly regulated to prevent unsolicited legal representation from third parties. In lay terms, the Labor Party is showing the Australian public that it is neither irresponsible nor weak when it comes to the question of illegal immigrants, despite what the government might from time to time try to assert.

This bill will go some way towards preventing greedy lawyers from touting for business and initiating vexatious class actions amongst those who are in detention centres. Yes, these people need legal advice and, yes, they need proper representation but only if they are in fact genuine asylum seekers fearful of an uncertain future in their own country. To this small but very active group of lawyers, each detainee represents a few hundred dollars. Once you multiply this by a few thousand detainees and illegal immigrants, they represent millions of dollars, dollars which are duped out of these poor people and end up in the coffers of a few law firms. We want to put a stop to that as much as the government. As I have said publicly in this chamber before, we do not agree or condone any action on the part of people who, if you like,

ambulance chase—the equivalent of injury claims—in the immigration area.

The passage of this bill will hopefully close a notorious loophole and will facilitate the speedier turnaround and deportation of non-genuine refugees and unauthorised arrivals, thus maintaining the integrity of Australia's humanitarian program. The passage of this bill will not hinder other agencies such as the Human Rights and Equal Opportunity Commission following up new arrivals to determine their claim for status and it will retain the genuine refugees' right to confidentiality and access to legal representatives.

I would like to speak briefly about the second part of the bill that is before us today—that is, the amendments to the Migration Act 1958 to cater for the increasing problem of people smugglers. Firstly, I would like to commend the government for implementing these new measures, although belatedly, to combat this disgraceful trade in human misery. I would like to bring to the attention of the chamber that all of the measures, at least nearly all of the measures, that are to be implemented are those which the opposition have been calling for repeatedly and publicly over the last several months. They are good measures, and I am very pleased that the government took up the suggestions that we have been making, and it is about time that action, not bureaucratic inquiries, took place.

Over the past 18 months Australia has increasingly been seen as a soft target to gangs of people traffickers in a number of countries. Overall in 1997-98 some 157 illegal immigrants arrived by sea on our shores. In 1998-99 this figure increased eightfold to 859, and more are coming every day. This increase in people smuggling, in the operation of the so-called 'snakeheads', signifies that Australia's penalties for these offences do not go far enough to deter those who assist these criminal warlords on our shores. The amendments put forward today reflect the seriousness of these crimes and their cost to the government and to the Australian community.

Having said that, and having stated the opposition's support for this bill, we will monitor these new tougher penalties very closely to ensure that they are applied only to

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those for whom they are intended—those who gain financially or materially from people trafficking. We have given the government a lot of leeway with these provisions, a lot of rope perhaps even to hang themselves on, given that we have reluctantly agreed to such measures as the electronic interception of communications between people smugglers. That was something which did cause us some concern, but we are satisfied, on the undertakings and the briefings that we have received, that these warrants will not be something that will be given over lightly and that there will have to be appropriate proof given.

Yesterday in the House, the Prime Minister, in answer to a question from the shadow minister for customs, Duncan Kerr, did say that he was prepared to consider releasing publicly the report of Max Moore-Wilton, except of course for the operational parts that might be in there. I hope he does that, because I think that everyone in this chamber—certainly the opposition—would like to see what is in that report. We accept that he may not be able to show us everything in the report because of matters of an operational nature.

The opposition will monitor these provisions to ensure that genuine refugees escaping their country of origin, often illegally, and in fear of lives, will not be prosecuted for doing so under these new penalties. We have made it clear that we will not tolerate any breaches to any of the international conventions on refugees. To do so would be to tarnish Australia's hard-won reputation as a generous, humanitarian nation. With these considerations in mind, the opposition gives its full support to this bill.

Mr SLIPPER (Fisher—Parliamentary Secretary to the Minister for Finance and Administration) (7.40 p.m.)—in reply—I would like to thank the honourable member for Bowman for his contribution and the opposition for their support. The Migration Legislation Amendment Bill (No. 1), as it was originally introduced in the Senate, was intended to clarify the rights of certain people held in immigration detention. It still does that—by ensuring that there is no obligation on the minister or any officer to provide

certain persons held in immigration detention with an application form for a visa or access to legal advice unless that person has requested it. However, the bill was amended in the Senate and now appears before the House in a significantly changed form.

The Prime Minister announced last Sunday that the government would be taking action to strengthen Australia's capacity to detect and deter illegal arrivals. The amendments made in the Senate are just the first of several steps the government is taking to implement the Prime Minister's announcements and combat people traffickers. Passage of the bill will send a clear message to would-be perpetrators and the Australian community that the Australian government takes people trafficking offences seriously. I want to make clear that this legislation is primarily aimed at the profiteers from people trafficking who organise individuals or groups to enter Australia illegally for a fee.

Although the law will apply equally to everyone, I stress that refugees are not at risk from these provisions. This is because the refugees convention, to which Australia is a party, provides that refugees are not to be subjected to penalties on account of their illegal entry or presence in the country of first refuge. That should allay the concern of the honourable member for Bowman. I commend the bill to the chamber.

Question resolved in the affirmative.

Bill read a second time.

Third Reading

Leave granted for third reading to be moved forthwith.

Bill (on motion by **Mr Slipper**) read a third time.

REGISTER OF MEMBERS' INTERESTS

Mr SOMLYAY (Fairfax)—As required by resolutions of the House, I table copies of notifications of alterations of interests received during the period 1 April 1999 to 29 June 1999.