

Liberal senators' minority report

1.1 Liberal senators disagree with several of the fundamental tenets of the Bill. They are concerned at the proposed delegation of the power of the Minister for Immigration and Citizenship in respect of housing determinations and the proposal to give additional power to the Minister to regulate. Liberal senators are also concerned about the insertion of a discretion (as distinct from an obligation) to detain suspected unlawful non-citizens, and the proposal to allow unlawful non-citizens free and unescorted access to the community. Taken together, the proposals contained in the Bill would significantly weaken Australia's border security and lead to an increase in unauthorised arrivals.

Discretion to detain

1.2 The Bill would allow immigration officials a discretion to release a known or suspected unlawful non-citizen into the community. While the Bill prescribes certain circumstances in which such a person must not be released, Liberal senators worry that too many potentially problematic non-citizens would not be caught by the proposed provisions.

1.3 Furthermore, Liberal senators note that proposed provisions 189(1)(b)(i) and 189(1A)(d) provide for the Minister to prescribe circumstances constituting 'unacceptable risk' a finding of which will preclude a person being released from detention. This could be interpreted as an acknowledgement that the provisions in proposed subsections 189(1) and 189(1A) fail to capture the kinds of unlawful non-citizens for whom detention is the only safe solution.

Temporary Community Access Permissions

1.4 The Bill would allow for an officer to permit a person in detention to go into the community for a specified period and for a specified purpose where they consider the risk to the community would be minimal.

1.5 Liberal senators consider that any power to allow unlawful non-citizens unescorted access to the community should only be exercised with great care. It is often the case that little health, identity and security information is known about unlawful non-citizens while they are in detention, and it is often the absence of such intelligence that delays resolution of a detainee's immigration status.

1.6 It is the view of Liberal senators that this initiative, if agreed to, could well lead to many more unlawful non-citizens 'disappearing' into the community.

Delegation of power to make housing determinations

1.7 The Bill would allow the Minister to delegate to senior departmental officers the power, under section 197AB of the Migration Act, to allow an unlawful non-citizen to reside in the community if it is in the public interest to do so. Liberal

senators consider that such an important power should be exercised only by the Minister, on the grounds that the provision would diminish accountability and transparency to the Australian people and lead to a considerable increase in refugee litigation.

Overuse of regulations

1.8 At the time of writing relevant regulations had yet to be drafted by the Department, much less released for public examination and comment. Liberal senators oppose the extensive use of regulations in respect of such important matters as those covered by the Bill, which in the case of 189(1) and 189(1A) directly impact on a person's liberty.

1.9 While Liberal senators note the provision of some detail of the proposed regulations by the Department in its submission, anything short of a draft of the proposed regulations is inadequate. Liberal senators concur with the view of several submitters that the devolution from primary legislation to regulation is to be discouraged on grounds of diminished transparency and accountability¹, and place on record their intention to consider moving to disallow the regulations when they come before the Senate.

Trends in unauthorised arrivals and detention

1.10 It is clear that the number of people in detention has increased dramatically in recent months, from about 400 to nearly 1000. Indeed numbers in detention have not been this high since May 2005.² This trend is not encouraging. The committee learned that:

- Only 2 per cent of detainees have been held for less than a week;
- Nearly 70 per cent of detainees have been held for between one week and six months;
- About 4 per cent, or 21 people, have been held for more than 2 years;
- One person has been held for over 3000 days, nearly 9 years.³

1.11 The Government clearly anticipates a rise in numbers, in light of the testimony by departmental officials at the committee's hearing and answers to questions on notice concerning strategies to grow capacity in detention centres and other detention facilities. A departmental officer informed the committee that moves are afoot to increase capacity and that if fruitful, 'several hundred additional beds'

1 See, for example, Law Institute of Victoria, *submission 18*, p. 6; Refugee and Immigrant Legal Centre, *submission 43*, pp 89; Refugee Council of Australia, *submission 37*, p. 4.

2 Immigration Detention Statistics Summary, Community and Detention Services Division, Department of Immigration and Citizenship, as at 17 July 2009.

3 Messrs Correll and Hughes, and Ms Larkins Department of Immigration and Citizenship, *Proof Committee Hansard*, 7 August 2009, p. 7.

would become available on Christmas Island over 'something like a three to six month horizon'.⁴

1.12 Liberal senators assume that such dramatic and expensive expansion would not be authorised were the Government not expecting the increased capacity to be utilised in the future.

Conclusion

1.13 Liberal senators are concerned that some of the measures proposed in this Bill may well send a signal to people considering travelling to Australia and arriving unauthorised, and at the number of would-be travellers who would be sufficiently encouraged by them to proceed, making an already dramatically deteriorating situation even worse.

1.14 Liberal senators take the view that many of the measures contained in the Bill are likely to serve to undermine the integrity of Australia's border security regime. In light of this danger, Liberal senators are not persuaded that a compelling case for reform has been made.

Recommendation

1.15 Liberal Senators recommend that the Bill be amended to address the above concerns, or failing that, rejected.

Senator Guy Barnett
Deputy Chair

Senator Mary Jo Fisher

Senator Russell Trood

⁴ Mr Correll, Department of Immigration and Citizenship, *Proof Committee Hansard*, 7 August 2009, p. 9. Mr Correll later referred to a figure of '300 to 400' beds.

