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PARLIAMENTARY DEBATES



THE SENATE

PROOF

**MIGRATION AMENDMENT (ABOLISHING
DETENTION DEBT) BILL 2009**

Second Reading

SPEECH

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BY AUTHORITY OF THE SENATE

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Speaker Polley, Sen Helen

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Senator POLLEY (Tasmania) (8.36 pm)—I rise tonight to speak in full support of the Migration Amendment (Abolishing Detention Debt) Bill 2009. This legislation not only marks the beginning of the Rudd government's reform of immigration policy in Australia but corrects a significant social injustice that has been long overdue.

For Senator Bernardi's benefit, tonight I am commencing this speech by borrowing some words from the opposition. Senator Bernardi would do well to note his colleague in the other place the member for Kooyong, Petro Georgiou, who encapsulated the essence of immigration detention debts perfectly when in June of this year he called them dehumanising. I was impressed by his comments as well as his courage in standing up for his personal beliefs, even when they were in conflict with those of his own party. We heard that from the speaker before me. Mr Georgiou was spot on in using the term 'dehumanising' because that is exactly what some have tried to do—to make refugees appear other than human in order to turn public sentiment against their plight. But we must consider their plight because a human cannot and should not be dehumanised. They are and will always be human beings and should be treated accordingly.

The member for Kooyong said:

No advanced society should allow on its statutes a law which so degrades and humiliates fellow human beings who are legitimately calling on our protection.

Unfortunately, this was the tenor of immigration detention policy in this country for far too long under the previous government. It has been one of dehumanising, vilifying and blaming those less fortunate than ourselves who often crammed by the dozens into unseaworthy vessels to cross untold miles of ocean for the dream of a better life, only to be locked up for years at a time. Then, to add insult to injury, they were handed a significant and crippling detention debt for the period it took for their refugee status to be assessed.

It is contrary to everything we, as a nation and as a civilised society, should be. The treatment of human beings as equals, as deserving of respect and as worthy of being treated how we ourselves would wish to be, with compassion and tolerance, is fundamental to our moral compass. That is exactly why

the Rudd government has committed to an overarching restructure of immigration policy in Australia: so that those elements that went too far and took away those signs of humanity can be restored. Humanity is fundamental to our nation.

It is possible to have a strong and effective border protection and immigration platform whilst not persecuting those people who are central to it. The very notion of detention debts—excluding the debts for those engaged in illegal fishing or people smuggling—is the very definition of persecution, and I am proud to be standing here today talking about the end of this archaic practice.

Present policy, albeit an ineffective one, is to transfer liability for the cost of a person's transport and daily maintenance during their detention to the detainee. This can amount to a daily cost of \$125 or more and, over a period of several years of detention, accumulating debts in the tens of thousands of dollars is not uncommon. The original intention was to minimise the cost of immigration detention to the Australia public and transfer the liability onto the unlawful non-citizen. These debts, once incurred, become part of this person's daily existence, regardless of whether they are ultimately granted refugee status.

If granted a visa to remain, this debt impacts on their capacity to settle themselves financially, effectively crippling them from establishing a normal life. If they are not granted a visa and they leave the country they are barred from applying for a visa until the debt is repaid. Of course, the debt is highly unlikely ever to be repaid given that most people applying for refugee status come from some of the poorest nations on Earth. Additionally, those who exit the country are often unable to be contacted by the department and therefore are not pursued for any repayments toward the debt. This renders the debt largely symbolic.

The most unavoidable truth of the immigration detention debts is that they have not worked. They have not acted as a significant deterrent to those entering Australia illegally. They have not served as a great source of revenue for funding further initiatives, and they do not come close to covering the actual cost of detention. In fact, the cost of administering the debt recovery process is often higher than the amount of debt repaid. For example, in 2006-07 and 2007-08 \$54.3 million of detention debt was raised with only

\$1.8 million being recovered. Most of the outstanding amount was then written off or waived. In 2008-09 the cost of administering the detention debt was \$979,526 and yet only \$667,306 was recovered. So one would have to ask what the point is of raising these debts when they cost more to administer than one can hope to recover, and most are written off or waived anyway, thus making the exercise pointless. Those who continue to incur debts are restricted in their lives by significant debts or they are unable to apply to re-enter Australia, often to rejoin family members, until the debt is repaid.

There has been a plethora of reports leading up to this piece of legislation, all calling for either the abolition of detention debts or extreme changes to the current process. These reports were in lock-step with growing public opinion on the ethics of this issue. In 2006 the Senate Legal and Constitutional Affairs Committee handed down its report, *Administration and operation of the Migration Act 1958*. This report stated that the imposition of detention costs was extremely harsh and called for the discontinuation of the policy, except where debts are legitimately incurred through deliberate acts of bad faith. This was followed by the Commonwealth Ombudsman's self-initiated investigation in 2007 into the Department of Immigration and Citizenship. The report, *Department of Immigration and Citizenship: administration of detention debt waiver and write-off*, handed down in 2008, found that there was scope for considerable improvement on the current process. Currently, a debt may be waived after an individual case is considered on its merits, or it may be written-off. However, writing off a debt allows for the possible reinstatement of the debt at a later time and effectively leaves this debt hanging over someone's head indefinitely.

The Joint Standing Committee on Migration followed in a similar vein, with the inquiry into immigration detention in Australia. The report, *Immigration detention in Australia: a new beginning—criteria for release from detention*, handed down in 2008, called the policy of detention debts 'discriminatory and punitive'. It examined the long-term impacts of detention debts on detainees, from financial impacts through to the effects on mental health and wellbeing. The joint standing committee found that the policy of applying detention debts was not providing any substantial revenue or contributing to the offsetting of detention costs, due to the low rate of recovery of these debts.

The recommendation of the joint standing committee was to repeal the liability of detention costs and also to immediately waive existing debts. This recommendation was, I must stress, unanimous and was made with opposition members present and

participating on that committee. It is therefore sad to now see a morally decent recommendation being undermined by those members opposite whom we have heard through the course of tonight—and I am sure we will hear others speak against this bill.

The migration amendment bill will work in three ways to realise the recommendations of the previously mentioned reports and community expectations. Firstly, this bill will repeal those sections of the Migration Act 1958 that move the burden of detention cost onto those held in detention, with few and appropriate exceptions. No longer will we bill the desperate and the helpless for the length of time it takes us to process their applications for refugee status and the condition in which we choose to keep them whilst in detention. The only cost that will remain is the cost of removal or deportation if their application for refugee status is declined.

Secondly, the bill will retain the liability for detention debts for those convicted of illegal fishing or people-smuggling, these being the 'appropriate exceptions' I mentioned before. These people are not choosing to enter Australia to flee poverty, persecution or war; they are entering Australia illegally for financial gain, causing untold environmental or social havoc through their actions, and therefore they should remain fully liable for the cost of detaining and removing them from Australia.

Thirdly, all outstanding detention debts will be extinguished under this bill. They will not be waived, thereby requiring a case-by-case assessment of the merits of a waiver—and therefore intolerably high administrative costs for undertaking this. They will not be written-off, allowing the possibility of these debts being reinstated at a later time if a later government decides that refugee seekers should once again be liable for their detention costs. The debt will simply be extinguished and will no longer cripple people financially, will no longer require costs for their administration and recovery, and will no longer dehumanise those who move through our detention system.

I think it is highly significant to point out that we are the only country that currently has such a debt for detention. No other nation treats refugees in this manner. No other nation throws more money at trying to recoup debts than it recovers. Only Australia chooses this ineffective and inappropriate policy. Does that make us the only country that is right in its approach, or the only country to refuse to admit that it is wrong? That was pretty much standard practice for the former government.

Some in the opposition—I think the previous speaker articulated this view—would have us believe

that this policy is still the right way to go, still the best way to create a strong deterrent to illegal immigrants and still the appropriate way to treat other human beings, despite our lonely status. The member for Hume called the bill a means to 'extend outrageous privileges to people who have bypassed the orderly refugee process.' An outrageous privilege? To not burden someone with tens of thousands of dollars worth of debt when they have proven to be a genuine refugee? An outrageous privilege to allow those removed from the country the opportunity to reapply for a visa to rejoin their families? This is not a privilege; it is simply the removal of an injustice. The member for Mackellar argued that, because most of the debts were waived or written-off, there was no need to repeal the provisions for transferring detention liabilities or to extinguish debts. But she obviously does not consider the enormous waste of taxpayers' money on the continued administrative costs of these debts. Money is spent on calculating, raising, monitoring and recouping these debts; and then even more money is spent in assessing waivers and write-offs of these debts. The member for Fisher gave the incredible statement that 'we must have border policies with compassion' and then continued to talk about how much better the former Howard government policies were. I think they were on a different planet during those 12 years from the one I and the Australian population as a whole were on. I would like to know when exactly the immigration policies of the former government demonstrated compassion. It is not a word you would link with the Howard government on any issue, really.

The opposition congratulate themselves on their immigration policies whilst in government. They congratulate themselves on the fact that children were held in detention for years, suffering untold emotional damage. They congratulate themselves for moving our immigration processing offshore, to small islands or to neighbouring countries, as though the problem was too troublesome to be dealt with on Australian soil. And then one of their own has the audacity to say that this was compassionate. Perhaps he is stuck halfway between the past and a utopian future. Perhaps he is nostalgically attached to the policies of the former government whilst simultaneously wanting new policies that are actually compassionate, unlike those that were adopted by the former government.

This policy is exactly the kind of compassion that we have been waiting for, and some of the opposition's own members have acknowledged this fact, much to their credit. Once again I would like to put on the public record my appreciation for Mr Georgiou's comments. I give him full credit for speaking up for what he believes in even though it brought him into conflict with his own party and his leader. The member for McMillan

also exemplified this. He at least had the courage to say that the old ways were wrong and he would not toe a party line that was unconscionable. He did not think the former government's approach was compassionate and he embraced what will be achieved when this bill is passed.

The opposition fell silent when this piece of legislation was voted on in the lower house in June of this year, avoiding the need to demonstrate their views with a formal vote. All their talk of Australia becoming a 'soft touch' and 'sending the wrong signal' did not equate to the courage to back this belief up with an audible 'nay' during the vote. Perhaps now, as this bill is voted on by the Senate, the opposition will choose to not remain silent. Perhaps they will in fact have the courage to admit that the stated position of some of their own is untenable. Perhaps they will actually vote for this bill, as I and my colleagues will. Then we can all be done with this ridiculous notion that retaining crippling debts for detention is somehow the best deterrent for the illegal movement of people. I commend the bill to the Senate.