



DEMOCRATS REFUGEE E-BULLETIN

Edition #4 11 August 2004

If this bulletin has been forwarded to you and wish you wish subscribe directly, please send an email to refugees@democrats.org.au.

To read online, please go to www.democrats.org.au/campaigns/free_the_refugees/newsletters

NOTICE: Project Safecom produces an excellent newsletter with immigration related media releases and articles. To get this newsletter go to www.safecom.org

1. Upcoming Events

- 1.1 Rally at Parliament House, Canberra 12.00 pm Wednesday 11th August
- 1.2 Human Rights Forum: Albany WA Monday 16th August
- 1.3 Human Rights Forum: Perth WA Wednesday 18th August 6-7.30pm
- 1.4 Human Rights Forum St Mary's, Sydney Monday 23rd August 7pm

2. High Court Decisions Brief

- 2.1 Behrooz v Minister for Immigration
- 2.2 Al-Katab v Godwin

3. Senate Work

- 3.1 Question without notice: Baxter Punishment Compound
- 3.2 Question without notice: High Court Decision
- 3.3 Motion Stateless People
- 3.4 Urgency Motion Introduction Speech – Senator Bartlett
- 3.5 Urgency Motion Speech – Liberal, Labor and Ind. respond
- 3.6 Urgency Motion Conclusion Speech

4. Opinion Piece – Senator Stott Despoja

5. Media Releases

1. Upcoming Events

1.1 Rally at Parliament House, Canberra 12.00 pm Wednesday 11th August

Indefinite detention of people should not be part of any democratic system of government, but the Australian government has passed laws which have allowed this to happen.

Following last Friday's High Court decision in which asylum seekers in Australia can now be held indefinitely... We Say... "NOT IN OUR NAME, JOHN!"

SPEAKERS: Hon Carmen Lawrence MHR, Senator Andrew Bartlett, Senator Bob Brown, and Prominent Refugee Advocates

1.2 Human Rights Forum: Albany WA Monday 16th August

Albany Community For Afghan Refugees (ACFAR)

Monday 16th August 7.30-9.30pm

Location: Albany Senior Citizens Centre, Grey Street West

Speakers:

Senator Andrew Bartlett Leader of the Australian Democrats.

Senator Bartlett has worked for many years to bring about positive changes to immigration legislation. He has visited every onshore detention centre and twice been to Nauru to meet with detained asylum seekers.

Alanna Sherry ChilOut Coordinator - Children Out of Detention

ChilOut is a mainly Sydney-based lobby group aiming to get all the children (and their caregivers) out of Australia's detention centres.

Local Hazara Representatives

Will talk on their firsthand experiences of refugee policy

Jack Smit, Founder of Project Safecom.

Project Safecom is a WA based refugee lobby, action and advocacy group.

Senator Brian Greig of the Australian Democrats will also attend the event.

For further information, contact

Karen Lee, Office of Senator Bartlett 0412 674 476

1.3 Human Rights Forum: Perth WA Wednesday 18th August 6-7.30pm

What are the parallels between Indigenous, refugee and same-sex policy? The issues may appear different on the surface but the root cause – scapegoating sections of the Australian community for political gain – is the same.

Perth Central TAFE, 25 Aberdeen Street, Northbridge
(Main Lecture Theatre - use Museum Street entrance).

Speakers:

Senator Andrew Bartlett, Leader of the Australian Democrats

Senator Brian Greig, Senator for Western Australia

Special Guest from the Western Australian Aboriginal Community

For further details contact: Dianne Green, Office of Senator Greig 08 9228 3133

Also on nearby which you could attend after the forum:

CARAD Fundraising dinner: raising funds for refugees on bridging visas

When: Wednesday, 18 August 2004

What: Dinner (various set menus, incl. vegetarian)

Time: 7pm onwards

Where: The Elephant and Wheelbarrow, 53 Lake Street, Northbridge

To order ticket(s): Phone Lily on 0417 502 248

Cost: Tickets \$25.00 per person. Additional donations most welcome.

For more details see <http://www.safecom.org/alannadinner.htm>

1.4 Human Rights Forum St Mary's, Sydney Monday 23rd August 7pm

The Western Sydney Peace Group invites you to attend a public forum on:
"Refugees and Indigenous People in John Howard's Australia"

St Marys Memorial Hall Cnr Great Western Hwy and Mamre Rd, St Marys

Speakers:**Politician** - Senator Aden Ridgeway, the only Indigenous Federal parliamentarian, visits Villawood immigration detention centre and is a vocal critic of current refugee and Indigenous policy. Senator Ridgeway will discuss the proposed abolition of ATSIC as well as current refugee and Indigenous policy changes being fought for by the Australian Democrats.

Advocate – Phil Glendenning is the director of the Edmund Rice Centre for Justice and Community Education. He is also the National President of Australians for Native Title and Reconciliation (ANTaR) and has extensive experience in both Indigenous and refugee advocacy.

Refugee – Farshid Kerohallpour is an Iranian refugee who was detained in Curtin detention centre. Farshid uses his experiences to speak out against human rights abuses in current refugee policy.

Activist - Merlin Luck is traveling around the country talking at public events to raise awareness of the plight of refugees and Indigenous peoples in Australia. Merlin used his airtime on the Big Brother TV show to make a stand about refugee detention and Indigenous policy. Merlin is an ambassador for ChilOut – www.chilout.org

Details: 0404 273 313 – timothy.k.vollmer@uts.edu.au – <http://wspg.blogspot.com>

2. High Court Decisions Brief

Two major decisions were handed down by the High Court last Friday.

2.1 Behrooz v Minister for Immigration

This was the Woomera escapees case. The defence argument was that conditions at Woomera detention centre were so inhumane, as to change the lawful administrative detention into punitive detention, and therefore unlawful under the constitution – which holds that only a chapter III court can administer punitive detention.

The defence had issued summonses to DIMIA to produce documents and videos that would be used to show the punitive conditions. DIMIA appealed against the summonses to the magistrate, lost then appealed to the Federal Court. They won the appeal and then the defence appealed to the Full Federal Court then the High Court.

The High Court in a 6-1 decision found that the argument that would be made using the evidence was not a lawful argument therefore would not issue the summons for evidence.

In that ruling, the High Court essentially found that not matter how inhumane the conditions of administrative detention, that did not make the detention unlawful as there is no legislation covering conditions.

2.2 Al-Katab v Godwin

The background is this – in a previous case before the Federal court it was argued that under the Migration Act, immigration detention is lawful for the purposes of processing or deportation in the reasonably foreseeable future. In the test case – Al Masri – it was found that if someone had completed their processing for a visa and failed, but could not be deported any e.g. they are stateless and no country will take them –neither of the two reasons for lawful detention were any longer relevant, so continued detention was unlawful. A few people were released under this principal, but the case was appealed by the government to the High Court.

In a 4-3 split, the High Court found that under the current Migration Act, the government has the power to detain asylum seekers potentially for the rest of their life.

Justice Gleeson in his judgment on Al Khateb found that:

It is an enduring - and many would say a just - criticism of Australia that it is now one of the few countries in the Western world that does not have a Bill of Rights. But, desirable as a Bill of Rights may be, it is not to be inserted into our Constitution by judicial decisions. If Australia is to have a Bill of Rights, it must be done in the constitutional way by persuading the people to amend the Constitution by inserting such a Bill.

Justice Gleeson is correct. It is not the job of the courts to legislate. It is the job of elected parliamentarians. The representatives of the people must uphold the trust placed in them to protect people within Australia's jurisdiction from abuses of power. Clearly, the ability to detain people indefinitely, under non-reviewable conditions is an abuse of government power.

3. Senate Work

3.1 Question without notice: Baxter Punishment Compound

Wed 4th August.

Senator STOTT DESPOJA (2.23 p.m.)—My question is addressed to the Minister for Immigration and Multicultural and Indigenous Affairs. Is the minister aware that the private company running Baxter detention centre, Global Solutions, has established a new Red 1 compound for a punishment program they call the 'four-phase behaviour regime'? Is the minister aware that this program apparently includes 20 hours of isolation per day and can last up to six weeks? Given that immigration detention is only lawful under our Constitution for administrative reasons, and by law only the courts can punish people, will the minister investigate the treatment being inflicted upon these people—people who are being detained for administrative purposes?

Senator VANSTONE—Senator Stott Despoja, I saw the article that you wrote for the Advertiser. I think it was published this morning, and I will have something more to say about that at another time. It is perhaps appropriate to point out here, because it relates to Senator Stott Despoja's question, that her article is riddled with what I will be generous and refer to as inaccuracies—although I find it difficult to understand why someone of Senator Stott Despoja's intellect, in a job such as hers where she has the capacity to get the facts right, could so comprehensively get it wrong in relation to immigration issues and in that process, I would argue, quite seriously mislead the public. The article did of course refer to her visit recently to Baxter detention centre with Merlin Luck of—

Senator Mason—Big Brother.

Senator VANSTONE—Big Brother fame. I did read an article in the paper saying that, of the two people who visited, one was a sort of five-day wonder and the other was Merlin Luck—which I thought was a bit harsh on the senator, actually. I did ask myself, 'Why does Senator Stott Despoja want to go there with Merlin Luck? Would it be that she is hoping she can get some publicity for herself out of doing so?' And cruelly, in one of my deeper, darker moments, I thought, 'Yes, that is probably why she did it.'

Senator, there is a process in Baxter detention centre for dealing with people who understandably, under these conditions, where they are anxious about whether they are ever going to get a visa—of course, these people are not refugees; these are the people who have been decided not to be refugees. But the senator, along with others, has done a pretty good job of convincing Australians that, when you think of the word 'refugee', you think of Baxter detention centre when you should think of people out in the community on protection visas. You should think of the 12,000 to 13,000 refugee and humanitarian people coming in every year to this country and getting permanent protection. That is what you should think of. But, no, the senator wants to focus on people who have been decided not to be refugees and are lawfully pursuing those claims.

It does happen sometimes, Senator, that people in these circumstances threaten to and sometimes do harm Commonwealth property. Sometimes they threaten and sometimes do harm themselves. There is a process for handling that and a process for handling their reintegration into the normal compounds in Baxter. I will make inquiries to see if there has been any change in respect of that, but I make the point that this is one of the most publicly scrutinised areas of government. It should be, and I am unaware of any recent change. If there is one, Senator, I will get back to you and you can rush up there with Merlin Luck again.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I am glad that the minister found this so amusing, and I ask her again: does she confirm—because she did not mention the words—that a new Red 1 compound has been established with the 'four-phase behaviour regime'? I thank her for her undertaking to see if any changes have taken place in recent times. From the minister's answer, can I assume that the minister is only talking about people being placed in isolation for the purposes of prevention of self harm, as opposed to reasons to do with punishment—for example, if a detained person has allegedly spat on the ground in front of a nurse? I ask the minister not only to investigate—and will she investigate these complaints?—but, in relation to her comment on scrutiny, will she make public the documentation that relates to those detained people who have been punished?

The PRESIDENT—Senator, that is a very long supplementary question.

Senator VANSTONE—Senator, I did not find your question funny; I thought the prospect of you carting up there with Merlin Luck was amusing, not your question. I certainly did not think your misleading of the South Australian community was amusing at all. As to the question of releasing any information to you, I will give that consideration but, if you are unable to get the facts right on all of the information that is currently available to you, I cannot see that adding more information to the pile will assist you. You have not waded your way through what information is publicly available to get that right. So I will do you a favour and perhaps limit the information to you so that you can get on top of what you have already got. I will see if I can help you out there! You might do the Australian public a favour, Senator, and every time you open your mouth, mention the \$2 billion in a budgetary period—\$500 million every year—this government spends on refugee and humanitarian intakes into this country and give us a gold star.

Senator Bartlett—That's torture!

Senator Abetz interjecting—

Senator Kemp interjecting—

The PRESIDENT—Order! Senator Abetz and Senator Kemp, come to order!

Senator Abetz—Mr President, I rise on a point of order. Is it in order for one senator to accuse another senator of wanting to torture people? If not, it ought to be withdrawn.

The PRESIDENT—Senator, of course unparliamentary language and accusations are unparliamentary but unfortunately I cannot hear anything up here for the noise down your end of the chamber. I was trying to bring people to order.

Senator Bartlett—Mr President, on the point of order: to assist you—

The PRESIDENT—I have already ruled there is no point of order because I could not hear what was being said.

Senator Bartlett—Mr President, I raise a further point of order. There are interjections being made demanding I withdraw. To assist you in your job of ensuring we have order as well as honesty, there should be an opportunity for the facts to be put on the record about the statement that has been made. It is a simple fact that this government tortures people in detention, but if the minister wants to make statements—

Government senators interjecting—

The PRESIDENT—Order! Senator Bartlett, there is no point of order.

3.2 Question without notice: High Court Decision

Mon 9th Aug

Senator BARTLETT (2.28 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs. I refer to last Friday's High Court decision regarding mandatory detention under the Migration Act. Can the minister confirm that the court found that it is lawful to detain a person indefinitely, even where that person is stateless and has signed a request to be removed from Australia over two years ago but the Australian government has been unable to find any country that would receive them? How many other people are currently subject to this prospect of indefinite detention, despite having requested removal from Australia over 12 months ago? Does the government believe it is satisfactory that it can be lawful to detain a person, potentially for life, without charge or trial, just because we cannot find any other country who will receive them?

Senator VANSTONE—I thank Senator Bartlett for the question. There were three cases decided in the High Court on Friday, all of them in favour of the government— or perhaps best described as the previous minister. I am pleased about that because there were people who wanted to say that the government had been detaining people unlawfully and it is now clear that is not the case. I am not suggesting for one minute, Senator Bartlett, that you might have been one of those people, but you do offer me the opportunity to go and check that.

In any event, the High Court did decide that the words of the Migration Act are clear and unambiguous and that other matters cannot be inferred into a reading of the act. I have not yet had an opportunity to read the judgments—I will do that. But your question, Senator, I think leaves out part of what is a difficult issue in returning people who are found not to have a lawful reason to stay here—that is, whether they themselves are contributing to not being able to be returned. There are individual circumstances in each of these cases. They are all different. I am thinking of one case—and I do not want to mention the details of

it—where someone appears from the public’s perspective to be stateless but has changed their story on so many occasions that you can understand departmental officials being uncertain of the veracity of the latest story. That is the

advice in relation to one matter that I was given on Friday, and I will be looking at a brief in relation to that case to check the details of it.

What you did not point out, Senator, is that we do have a safety valve here—that is, ministerial discretion. It is not for life; there is a ministerial discretion, there is the opportunity for people to be given relief and stay in Australia. So it is not the case that people are necessarily detained, as you put it so dramatically, for life.

Having said that, I have asked for a review of all the long-term detention cases individually to come to me. I will have a look at them and see if they warrant intervention.

Equally, I will look at each of the cases of those people who are at large because of the Al Masri decision and have not yet been re-detained. So what I can confirm for you is that we have the opportunity to do these things on a case-by-case basis, and that is how it will be done. I am not going to make generalisations about it.

Senator BARTLETT—Mr President, I ask a supplementary question. Can the minister confirm that her so-called safety valve, ministerial discretion, is not able to be compelled to be used—that no-one can undertake court action to require a minister to use that discretion to free somebody regardless of how long they have been locked up? In providing more information to the Senate in relation to my previous questions, could the minister also indicate how this situation is consistent with our obligations under the statelessness convention and the Convention on Civil and Political Rights, which states that everybody has the right to liberty and security of person and contains opposition to arbitrary detention? Can the minister also confirm that in the case last week involving a person alleged to be stateless, their status of statelessness was not contested by the government in that case?

Senator VANSTONE—In relation to your last question, Senator, no, I cannot. As I said, I will go through each of these individually—not just the people who were the subject of the case but the people who were not detained—that is, those out on, presumably, bridging visas because of the Al Masri decision in the Federal Court. They will get a good looking over by both the department and my own office, as will the cases of people who are still in detention. I take the opportunity, when the High Court has considered something carefully, to take into account what has been said and have another look. I have given an undertaking that I will do that, and when I have finished doing it you will probably know about it.

3.3 Motion Stateless People

Mon 9th Aug

Senator STOTT DESPOJA (South Australia) (3.28 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to a question without notice asked by the Leader of the Australian Democrats (Senator Bartlett) today relating to the detention of asylum seekers and a High Court finding.

On Friday last week, 6 August, as my honourable colleagues would be aware, a couple of very important decisions were handed down by the High Court of Australia.

Essentially, it is now constitutional—that is how fundamental this change is—and lawful under the Migration Act to keep someone who is in detention indefinitely detained, even when there is no real likelihood of that person being able to be deported from Australia in the reasonably foreseeable future.

That is the amazing part of this judgment, of this decision. We are talking about the possibility that people can be detained for life. This is a grave constitutional and legal change that has a fundamental impact on human rights in this country.

We should be debating this issue—as I hope we will do this afternoon in the context of an urgency debate initiated by the Australian Democrats. This is one of the greatest outrages. We should be doing everything in our power, for humanitarian reasons, to ensure that this legislation, this law, this ruling, does not mean that people are detained in our country for life. We should also be looking at the legal avenues through which we could prevent such a horrific thing happening, now and into the future. One way we could

prevent that happening would be by establishing a bill of rights in this country. I am sure my colleagues will have more to say on that this afternoon.

The High Court has found that under current legislation the government can detain people for the rest of their lives—and inhumane conditions do not make that detention unlawful. I am so ashamed today. I am so angry about this judgment and the implications it has for the real people, the personal tragedy, at the heart of this decision. The minister was able to use the legal jargon, and I am sure that there will be people in better positions than us who will do just that. People like Peter Qasim, with whom I met recently in Baxter detention centre, has been in detention for around six years.

He is effectively stateless. What does this decision potentially mean for him? It possibly means spending the rest of his life in Baxter. How heartbreaking that is. How have he and others reacted to this decision? We have on our conscience as a nation how these people are reacting. I know, on good authority—and I will be speaking to Peter later—that he is crushed by it. I am informed that he would rather not live than live in detention. He has nowhere to go. He is effectively stateless, so he cannot go anywhere else. That is the problem.

This judgment means that, regardless of not being able to be deported in the foreseeable future, he is stuck in detention, and maybe for life. This is a young man who came to this country fearing persecution, a man born in the disputed region of Kashmir on 14 May 1974. His father was murdered by security forces because of his political activities—peaceful activities, apparently. His mother died after that. As a young man, his own peaceful opposition to the government's brutal policies in the region led him to be detained and tortured in his own country by security forces and, after some years in hiding and on the run, he fled his country. He passed through Singapore and Papua New Guinea on his way to our country, but these were places in which he had no legal right to remain, and there was no way to have his claim for asylum heard. So he came to Australia on 9 September 1998.

The delegate of the minister assessed his claim, accepting that he was an Indian citizen from the region of Kashmir, and that he had been tortured. But she did not at that point believe that he faced persecution. To cut a long story short, he has been in detention all this time.

For five—almost six—years Peter Qasim has been in detention. The implication of Friday's judgment is that he will be in detention for life. If we are not debating this as a matter of urgency this afternoon—I am sure we will be; the writing is on the wall—we should be discussing this in our national newspapers and in other national fora. (*Time expired*)
Question agreed to.

3.4 Urgency Motion Introduction Speech – Senator Bartlett

[Senator BARTLETT](#) (Queensland—Leader of the Australian Democrats) (3.50 p.m.) —I move:
That, in the opinion of the Senate, the following is a matter of urgency:

The need to:

(a) acknowledge the finding of the High Court on 6 August 2004 that it is constitutional and lawful under the Migration Act to keep a person in detention indefinitely even where there is no real likelihood of that person being able to be deported from Australia in the reasonably foreseeable future; and

(b) act immediately to amend the Migration Act to make it unlawful for a minister to be able to keep a person detained indefinitely even where there is no real likelihood of that person being able to be deported in the reasonably foreseeable future.

This is, without doubt, an extraordinarily urgent matter and I think many Australians—and, I suspect, many in this parliament—do not fully appreciate the seriousness of the situation. Following the 4-3 decision of the High Court it is now law in this country—and to be technical it was not law until Friday because previously there was a standing decision of the Federal Court to the contrary—that a person can be kept in migration detention indefinitely even when they have said that they want to be deported, even when the Australian government has tried for a prolonged period of time, without success, to deport them, and when there is no real likelihood of that person being able to be deported in the reasonably foreseeable future. Even in such circumstances that person can be kept locked up indefinitely. It is quite literally a life sentence or a potential life sentence for a person who has not been charged and who has not been tried—without any scope for judicial oversight of that detention. That is obviously extremely serious and extremely distressing. To use the words of one of the High

Court judges who ruled in favour of the government, it is a tragic situation for the people concerned—and the person concerned in this case.

It is, I suggest, an extremely serious situation for the entire Australian community because we now have a situation where a government minister can deny freedom to a person, can lock them up for administrative purposes indefinitely, without recourse to the courts, without charge, as long as they can get an act through the parliament that gives them that power and that power relates to one of the heads of power in the Constitution. We have an act such as that today, which is the Migration Act, that gives the power to keep a person in administrative detention forever, even if they cannot be deported. That act gives that power to a government minister. It also means that it is now lawful if a government can get a law through this parliament in a whole range of other areas, and the obvious immediate potential is in the area of security and all the so-called antiterrorist legislation that is being passed, with a clear head of power for the government to act in that area. It would be lawful, if a relevant act empowered the government to do so, to detain someone indefinitely without charge on the grounds of security and public safety. I believe that is something that the vast majority of Australians would find extremely concerning and I believe it is not what the parliament could possibly have envisaged when it passed this particular section of the Migration Act back in 1992.

I should emphasise that the Democrats strongly oppose mandatory detention and we strongly oppose keeping people in detention any longer than is necessary, but under the act as it stands the purpose of detention is to keep people in detention whilst their claim for a visa is being assessed and to keep them available for deportation as soon as is practicable. The problem for the people involved in the cases before the High Court—and a range of other people—is that it is not practicable at any stage in the foreseeable future for those people to be deported. So the purpose of keeping them in detention so they can be deported as soon as practicable, I would have thought, becomes void. I submit that that would have been the intention of the parliament when this piece of legislation was passed. But we never know, of course, and the fact is that the High Court has ruled otherwise, so my opinion of what the intention of the parliament might have been and my opinion about how the act should be interpreted does not matter. The High Court have spoken, as they have the power to do under the Constitution, and they have interpreted the law to allow the government of the day to keep a person in administrative detention indefinitely.

Today in question time the minister said, 'We have got a safety valve because we have got ministerial discretion, so is not forever because the minister can let a person out.' They can, but they do not have to, and there is no legal avenue anyone can pursue to compel them to let that person out. There are people now in detention, from even before this decision—because the government was resisting the interpretation of the law as it previously stood—who have been there for one, two, three or four years who have signed a piece of paper saying: 'Deport me. I am willing to go. Send me back.' And the Australian government has not been successful in sending them anywhere, so they have been detained. There is a person in Baxter, Mr Kassim, who has been in detention since 1998. He has submitted to go back. He is originally from the disputed region of Kashmir but has not been able to obtain travel documents and has not been accepted by the government over there, so he is perpetually locked up. Can any of us imagine what it would be like to have to face that scenario? What would it be like to be a human being denied your freedom, caught in the ultimate bureaucratic catch-22 and imprisoned for the foreseeable future without any legal avenue to pursue?

This undermines one of the most fundamental principles that our country and our rule of law are built upon: the right to freedom. Freedom from arbitrary imprisonment by an executive government is one that is now clearly at risk. There is a wide range of issues that could flow on from this. The bill of rights debate needs to be explored again. But all this motion seeks to say is that this decision indicates an interpretation of the law that the Democrats believe goes far too far and that we should immediately reverse that and enable a person to be freed from detention if there is no prospect of them being deported in the foreseeable future. There are plenty of other things that we believe should happen, but that simple fact, that simple situation, that people should not be condemned to the prospect of perpetual detention without any recourse to a court, should be removed. (*Time expired*)

3.5 Urgency Motion Speech – Liberal, Labor and Ind. respond

Please use the following links to see all the speeches.

Please note that if you click on their names at the top of the speech, you will be given their contact details to send them your opinion of their speech

Senator Mason (Lib)

http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=1006273&TABLE=HANSARDS

Senator Ludwig (Lab) – introducing Labor Amendments to Urgency Motion

http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=1006277&TABLE=HANSARDS

Senator Brandis (Lib)

http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=1006281&TABLE=HANSARDS

Senator Lees

http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=1006285&TABLE=HANSARDS

Senator Kirk (Lab)

http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=1006289&TABLE=HANSARDS

Senator Payne (Lib)

http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=1006293&TABLE=HANSARDS

Senator Harradine

http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=1006297&TABLE=HANSARDS

3.6 Urgency Motion Conclusion Speech

[Senator BARTLETT](#) (Queensland—Leader of the Australian Democrats) (4.48 p.m.) —I thank people for their contributions to this debate. The Democrats do not support Labor's amendment because it takes away the core part of what the urgency motion seeks to do. The first part of the urgency motion is to note the court's ruling. We now have a serious situation where people can be locked up indefinitely for so-called immigration purposes when there is no prospect of them being deported in the foreseeable future. That includes stateless people where no country is likely to accept them.

The urgency motion goes on to say that we believe that is unacceptable and that the law should be changed to remove that prospect. The Democrats would like to do far more than that to our immigration law but we think that single, simple thing—that it should not be possible for a minister of this government or any future government to keep someone in detention indefinitely without charge—should be acceptable. We should seek to remove such an offensive provision from any law in the land. The longer it is allowed to stand the more it sends a signal that that sort of extreme amount of executive power to deny somebody their freedom is acceptable.

I cannot support any amendment that would remove that simple part from the motion even though Labor's amendment makes a range of other points, some of which have some validity. The simple thing is that the Democrats' strong view is that it is not appropriate for such an enormous power as the denial of freedom to be in the hands of a government minister without any scope for judicial oversight or intervention. I note that the minister did not come to defend the situation at all in this debate. It is good that she might be going to look at the circumstances of the couple of people who are the subject of these court decisions, but there are others.

A person's freedom should not have to depend on the goodwill of any individual minister to have a look at the case. No other democratic country allows that sort of power. No other democratic country allows mandatory detention regardless of the circumstances, regardless of how long you are likely to be in detention and regardless of the prospects of deportation. Senator Mason said these people had no right to be in this country, but they are here, that they may have no right to be anywhere else and, apparently, we say they have no right to freedom. We lock them up indefinitely, according to Senator Brandis as a preliminary to being deported. It is a very long preliminary. We have someone who, next month, will have been imprisoned for six years. It is not a crime to be stateless; it is not a crime to fail in your claim for asylum. You should not lose your freedom for such extreme lengths of time. As a

consequence, I believe the law is unjust and it should be changed. The Democrats will continue in our efforts to ensure that it is changed.

Labor's amendment was then voted on. It was supported by ALP, Harradine and Greens and opposed by Democrats and the Coalition - it lost 25 - 37

The Democrats Urgency motion as originally put to senate was then voted. Labor and Liberal parties joined to vote it down. Senators Lees and Harradine joined the Democrats and Greens in voting for the motion, but it was lost 11-49.

4. Opinion Piece – Senator Stott Despoja

Adelaide Advertiser - Wednesday 4th August 2004

Senator Natasha Stott Despoja

What will you say when your grandchildren ask you:

"Didn't you know that little children were kept behind razor-wire fences for four years or more?"

This often spoken quote among refugee advocates, sums up my feelings about detention centres except for one thing – I have enough trouble answering this question now. How do our Government and Opposition justify continued detention of asylum seekers?

I recently visited Baxter Detention Centre in Port Augusta with former *Big Brother* housemate turned Chiloout Ambassador, Merlin Luck. We heard heart wrenching stories from men, women, children and teenagers. They told of fleeing their country to escape from war and persecution, taking enormous risks to try to secure a safer future, only to find themselves locked up for years while the Government determined whether they were genuine refugees or not, and if fortunate, granted them a visa.

I met three men who had been in held in detention for six years. Some were stateless, with no country to which to return. Under current policy, this means they can be detained for the rest of their life, without having committed any crime.

Some had won their court cases, only to have Minister for Immigration repeatedly appeal against the decision.

This month's announcement about Temporary Protection Visa holders has been wildly exaggerated. The changes will not benefit 9500 TPV holders in Australia as the Government would have us believe - but will assist a handful of the asylum seekers who fit the stringent criteria necessary to be granted a skilled migration or spouse visa.

The claim that all children have been released from Baxter is also false. The housing detention in Port Augusta, to which many women and children have been moved, is a "mini Baxter". The housing detention is constantly monitored by guards and security cameras, and detainees are allowed little freedom of movement.

One woman with her one year old daughter, spends half the week in the housing detention and half in Baxter, because she doesn't want to be separated from her husband. Another mother has remained in Baxter since her son's birth three months ago. She is severely depressed and is now reliant on medication.

The number of children in detention is clouded as many unaccompanied minors are mistakenly assumed to be over 18 when they arrive in Australia and once children (whose ages are known) turn 18, the Department of Immigration can detain them without affecting their rhetoric about kids in detention centres. There are a number of teenagers detained at Baxter.

The punishment compound at Baxter known as the Red One compound, is a hidden part of the Government's immigration policy. Apparently, a number of people were released from this compound the morning of my visit - weeks earlier than anticipated. I wonder what the Department was afraid I would discover about this unit, or the treatment of those who are held there?

5. Media Releases

Democrats initiate urgent debate on High court decision on indefinite detention
http://www.democrats.org.au/news/index.htm?press_id=3908&display=1

High Court grants govt absolute powers to detain people
http://www.democrats.org.au/news/index.htm?press_id=3899&display=1

Minister won't deny existence of punishment compound
http://www.democrats.org.au/news/index.htm?press_id=3888&display=1

DIMIA threatens to return asylum seeker to 'Axis of Evil' country
http://www.democrats.org.au/news/index.htm?press_id=3861&display=1