

Labor for Refugees

New South Wales

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LABOR AND THE BORDER FORCE LEGISLATION

Australian barrister Julian Burnside AO QC said in the media recently –

“With support from a meek Labor party (which has forfeited any claim to decency on this issue) the government introduced the Australian [Border Force Act](#). It came into operation on 1 July this year. Among other things, it makes it a criminal offence, punishable by two years’ jail, for a person who works in the detention system to disclose any fact they learn while working in the system.

In broad outline, it defines as an “entrusted person” anyone who works for the immigration department or a contractor to it; it is a criminal offence if an entrusted person “makes a record of, or discloses” protected information. “Protected information” is defined as “information that was obtained by a person in the person’s capacity as an entrusted person”. Strictly, that means that if a Transfield employee on Nauru wants to establish a relationship with a Wilson Security employee on Nauru and she writes down his mobile number, that would be a criminal offence.

More seriously, if a health worker employed by IHMS on Nauru becomes aware that a refugee child has been sexually assaulted by a Nauru local, it would be a criminal offence to report the fact of that sexual assault.

There is a defence provided by section 48 of the Act. It provides that an entrusted person may disclose protected information if:

- (a) the entrusted person reasonably believes that the disclosure is necessary to prevent or lessen a serious threat to the life or health of an individual; and*
- (b) the disclosure is for the purposes of preventing or lessening that threat.*

So, disclosing casual details for the purpose of being a nuisance is still a criminal offence. But disclosing the fact of sexual assaults, self-harm, cruel treatment etc would not be an offence if it was done for the genuine purpose of lessening a perceived serious threat to the life or health of other detainees.

It is fairly clear that all this is intended to discourage people in the detention system from speaking out. Fortunately, some have spoken out.”

Why did Labor vote for this legislation? It appears that Richard Marles, Shadow Immigration spokesperson, reassured the Caucus that the current Federal whistleblower legislation sufficiently protected those who intended to speak out. Richard Marles has since announced further amendments to the Border Force Legislation. On Monday 12th October 2015, Richard Marles presented a private member’s bill which would legally bind staff at immigration detention centres to report all child abuse.

The Marles’s Bill would impose a mandatory 24-hour reporting regime for any staff who “reasonably” believed a child was at risk.

This bill ensures that there is absolutely no doubt that staff have not only freedom to report abuse but a legal obligation to do so,” he told the House of Representatives on Monday, saying detention was no place for children. (The Guardian 13th October 2015).

MOTIONS THAT WE RECOMMEND TO ALP BRANCHES

Labor for Refugees has asked our supporters to consider supporting the three following motions which Labor for Refugees sent to the Leader of the Opposition Bill Shorten, the Shadow Minister for Immigration and Border Protection Richard Marles and Shadow Attorney General Mark Dreyfus.

AUSTRALIAN BORDER FORCE

ThatBranch/FEC condemns the passage with Labor's support, of the creation of the Australian Border Force. We call on any future Labor Govt. to disband the Australian Border Force, return personal to their former duties in the Australian Customs and Border Protection Service and Department of Immigration and distribute any law enforcement powers to the Australian Federal Police who are subject to judicial oversight and the rule of law. The Australian Border Force is a direct threat to open democracy, separation of powers and the rule of law in Australia and should not be tolerated.

AUSTRALIAN CITIZENSHIP AMENDMENT ALLEGIANCE TO AUSTRALIA BILL 2015

ThatBranch/FEC calls on the Federal Parliamentary Labor Party to oppose the proposed laws allowing for the stripping away of Australian citizenship from existing and potential dual nationals without the need for initial judicial process. These laws in their current form are discriminatory and will allow the Immigration Minister to arbitrarily determine whether or not an existing or potential dual national has engaged in conduct which would involve loss of citizenship. In particular, this Branch is opposed to the automatic revocation of citizenship and the deemed revocation of citizenship upon events occurring together with the additional difficulty of having a court overturn a ministerial decision to revoke. Further, this Branch is fundamentally opposed to the wide range of offences, many of which could be quite trivial, being used as a trigger for the purported revocation of citizenship.

MAINTAINING THE GOOD ORDER OF IMMIGRATION DETENTION FACILITIES BILL 2015

This legislation is yet to come before the parliament. It was described by a NSW Supreme Court Judge as legislation that would authorise guards in detention centres beating asylum seekers to death. Sue Lines, Labor Senator from WA sat on the Senate Committee that examined this legislation and wrote a Minority Report for that committee on behalf of Labor opposing the passage of this legislation.

ThatBranch/FEC is opposed to the Maintaining the Good Order of Immigration Detention Facilities Bill 2015 and calls on the Federal Parliamentary Labor Party to oppose it in all of its forms. This Bill could only be necessary to justify the type of abuse of power and excesses that have been seen in recent times in Manus and Nauru and could only encourage such behaviour.

This Branch is deeply concerned that legislation such as this, will inevitably lead to an exacerbation of the institutional abuse which is now being identified in the Royal Commission into Institutional Abuse of Children and the Labor Parliamentary Party should stand against the Bill.