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Public Bill Committee

NATIONALITY AND BORDERS BILL

Third Sitting

Thursday 23 September 2021

(Morning)

CONTENTS

Examination of witness.
Adjourned till this day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

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The Committee consisted of the following Members:

Chairs: † SIR ROGER GALE, SIOBHAIN McDONAGH

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| † Anderson, Stuart (<i>Wolverhampton South West</i>)
(Con) | † McDonald, Stuart C. (<i>Cumbernauld, Kilsyth and Kirkintilloch East</i>) (SNP) |
| † Baker, Duncan (<i>North Norfolk</i>) (Con) | † Owatemi, Taiwo (<i>Coventry North West</i>) (Lab) |
| † Blomfield, Paul (<i>Sheffield Central</i>) (Lab) | † Pursglove, Tom (<i>Parliamentary Under-Secretary of State for the Home Department</i>) |
| † Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab) | † Richards, Nicola (<i>West Bromwich East</i>) (Con) |
| † Coyle, Neil (<i>Bermondsey and Old Southwark</i>) (Lab) | † Whittaker, Craig (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Goodwill, Mr Robert (<i>Scarborough and Whitby</i>)
(Con) | Wood, Mike (<i>Dudley South</i>) (Con) |
| † Gullis, Jonathan (<i>Stoke-on-Trent North</i>) (Con) | |
| † Holmes, Paul (<i>Eastleigh</i>) (Con) | Rob Page, Sarah Thatcher, <i>Committee Clerks</i> |
| Howell, Paul (<i>Sedgefield</i>) (Con) | |
| † Lynch, Holly (<i>Halifax</i>) (Lab) | |
| † McLaughlin, Anne (<i>Glasgow North East</i>) (SNP) | † attended the Committee |

Witness

The Hon. George Brandis QC, High Commissioner for Australia to the United Kingdom

Public Bill Committee

Thursday 23 September 2021
(Morning)

[SIR ROGER GALE *in the Chair*]

Nationality and Borders

11.30 am

The Chair: Good morning, ladies and gentlemen. Our first witness is unable to join us this morning. The sitting is suspended until our second witness arrives.

Sitting suspended.

Examination of Witness

The Hon. George Brandis QC gave evidence.

12.10 pm

The Chair: We shall now take evidence from the Hon. George Brandis QC, high commissioner for Australia to the United Kingdom. We have until 12.45 pm for this session. Good morning, Sir, and thank you for joining us. Could you please identify yourself for the record?

George Brandis: Good morning, Mr Chairman. Good morning, ladies and gentlemen. My name is George Brandis and I am the high commissioner for Australia to the United Kingdom.

Q108 Bambos Charalambous (Enfield, Southgate) (Lab): Thank you, High Commissioner, and welcome to today's session. I would like to ask some initial questions about the timeline of the borders policy in Australia, or what became Operation Sovereign Borders. What the Bill before us tries to achieve happened in Australia over a period of time, so I would like to establish the timelines.

George Brandis: Yes, I can tell you that. Operation Sovereign Borders was a policy introduced by the Government of Mr Tony Abbott, which was elected in September 2013, and administered under the leadership of the then Minister for Immigration and Border Protection, now the Prime Minister, Scott Morrison.

Perhaps it would be helpful if I gave the Committee a little context. The purpose of Operation Sovereign Borders was to address a problem that had grown increasingly acute in the previous years: the arrival or attempted arrival by boat—almost always ramshackle, small, unsafe boats—across the seas, particularly the Timor sea, to the north-west of Australia, of irregular maritime arrivals. In the years prior to Operation Sovereign Borders coming into effect, there had been more than 50,000 illegal arrivals to the north-western coast of Western Australia in 827 vessels. That is the number of people we know about who made the journey.

We also know that a large number of people who attempted to make that journey drowned. There will never be a reliable figure for what that number was, because we simply do not know how many there were, but because we have counted, sadly, from the corpses, we know of 1,204 people who drowned. Whether the actual number was a multiple of that, or many hundreds more, it is impossible to tell, but certainly more than 1,200 people drowned.

Operation Sovereign Borders was introduced to address that dreadful problem. The implementation phase lasted approximately nine months, during which the flow continued. However, as the policy began to take effect and be effective, that flow dwindled to a point where some nine months later, by July 2014, it had ceased completely. Since then, there has not been a single irregular maritime arrival on Australia's shores, as far as we can tell.

Q109 Bambos Charalambous: You said that these boats were coming to the north-western part of Australia. Where were they coming from?

George Brandis: Primarily the southern shores of Indonesia.

Q110 Bambos Charalambous: How far is Indonesia from the north-western shore of Australia?

George Brandis: It is a great distance. I cannot give you the exact figure, but it is certainly more than 1,000 km.

Q111 Bambos Charalambous: Other aspects of the immigration policy before Operation Sovereign Borders were offshoring and detention accommodation. Do you recall when those were introduced?

George Brandis: They were part of Operation Sovereign Borders. There were three elements to Operation Sovereign Borders: disruption and deterrence activities; turnarounds, where it was safe to turn the vessels around; and offshore processing. I will speak briefly to each of those elements.

With the co-operation of the Indonesian authorities, the people smugglers' activities were disrupted at the points of embarkation on the southern shores of Indonesia, so it became more difficult for them to publicise and assemble the clientele to embark on these unsafe vessels. Generally, they were run-down fishing vessels.

The turnaround operation, which was conducted in international waters, repelled the vessels and returned them to the Indonesian shore, where it was safe to do so.

Regional processing, through a series of agreements that Australia made with Nauru and New Guinea in particular, meant that people who were not turned around and were taken onboard Australian vessels—they were rescued, in effect, because they could not be safely turned around—were processed offshore in countries where they were not at risk.

It is important to stress that Australia's obligations under the 1951 refugee convention were complied with at all times, for several reasons. First, Indonesia in particular was a transit country for these people—none of them claimed to have been persecuted by the Indonesian Government. Secondly, the countries to which they were sent for regional processing were safe countries, where they were not exposed to the perils against which the refugee convention protects. Lastly, Australia observed its non-refoulement obligations at all times.

Q112 Bambos Charalambous: In relation to the offshoring in Papua New Guinea, is it correct to say that Papua New Guinea declared the transfers illegal, so offshoring had to stop because of the decision made there?

George Brandis: There was litigation in New Guinea about the agreement between their Government and the Australian Government in relation to a particular processing

centre on the New Guinea mainland. It is not my understanding that that affected the other processing centre within New Guinea, on Manus Island.

Q113 Bambos Charalambous: But there was a class action brought by people from Manus Island in relation to the way they were treated. Do you recall the outcome of that?

George Brandis: I am not in a position to speak in relation to that, but I make the point that that is entirely a matter for the Government of New Guinea. From an Australian point of view, the legal and constitutional validity of the offshore processing arrangements were challenged in the High Court of Australia, which in the Australian system is the equivalent of your Supreme Court. The High Court ruled that under the regional processing agreements that existed between Nauru and Australia, and between New Guinea and Australia, the regional processing centres were not Australian centres; they were in no respect under the jurisdiction of the Commonwealth of Australia. They were centres operated by the Governments of Nauru and New Guinea respectively.

Q114 Bambos Charalambous: But was that not part of the reason why Australia was reported to the International Criminal Court for processing in Nauru and New Guinea?

George Brandis: I do not think that is correct. I think it would be correct to say that there was a complaint made by people who disagree with the policy to the United Nations Human Rights Council.

The Chair: This will have to be your last question, Mr Charalambous.

Q115 Bambos Charalambous: Do you have any figures on the cost of offshoring?

George Brandis: I do not have those figures in front of me. Under the regional processing agreements that Australia entered into with Nauru and New Guinea, the establishment of those centres, which required capital works and so on, was contributed to by Australia.

Q116 Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): Thank you for giving up your time this morning, Mr Brandis. On the capacity of the offshore centres, am I right to say that it would be in the region of around 3,000 offshore places in total?

George Brandis: There were always more in Nauru than in New Guinea. Whether at the maximum point they reached as many as 3,000, I am not sure, but I would not be surprised if it was roughly that figure.

Q117 Stuart C. McDonald: Is it fair to say that there was a challenge within a few months that these places were essentially taken up pretty quickly and capacity was reached?

George Brandis: What happened, as I indicated in the timeline I outlined at the start of my evidence, is that from the introduction of the policy, beginning in September 2013, there was a period during which the effectiveness of the policy was tested by people smugglers. The numbers of people seeking to enter Australia in an

irregular fashion continued and then dwindled to nothing by July 2014. Again, I do not have the figures in front of me, but I think it is generally true to say that in the early days of the policy the numbers were greater, obviously, than in subsequent years when the efficacy of the policy was established.

I wonder, Mr McDonald, whether I may make a broader point about this, because I know that this country is seeking to address a problem that has some resemblances but also important differences. The people who put these individuals, groups and families on boats were criminal gangs. People smuggling and people trafficking is a variety of organised crime. Organised crime is a business and, like every other business, it depends upon cash flow. The most important thing that Australia was able to do was drive the people smugglers out of business by depriving them of a product to sell and destroying their cash flow.

Q118 Stuart C. McDonald: We all want to see that happen, but we have different views about how we can do it and the other implications of various policies. Madeline Gleeson, for example, and others suggest that the offshoring itself achieved very little for the first year or two after it was introduced. Numbers did not decline at all; in fact, they soared for a while. What actually achieved the reduction in the number of boats arriving in Australia was the pushback policy. Would it be fair to say that it was this that delivered success, rather than the offshoring?

George Brandis: I respectfully disagree with you, Sir, and I say that having been both a member of the National Security Committee of Cabinet throughout that time and, in fact, the Attorney General who wrote the legal advice on the basis of which the policy was founded. With respect, it was not the Australian experience, and it would be artificial and wrong, to isolate one of those three elements—disruption and deterrence activities, pushbacks and offshore processing—as being more effective than the others. Rather, it is the case that they were a suite of policies that, operating together, had the effect of driving the people smugglers out of business.

Q119 Stuart C. McDonald: But when was the last time anyone was sent to an offshore processing centre? Is it not years ago?

George Brandis: Let me get that information for you—I cannot give you a date. It is certainly the case that, from the early days, the need for offshore processing significantly dwindled because of the efficacy of the policy.

Q120 Stuart C. McDonald: But is that not more because it costs billions of dollars and subjects people to what many regard to be cruel and inhuman treatment?

George Brandis: Sir, I am not going to engage in rhetoric. The fact is that most Australians took the view, as did the Government and the Opposition, that the inhumanity was in letting thousands of people drown.

Q121 Stuart C. McDonald: Nobody wants to see thousands of people drown. What we are challenging is whether or not the policy of offshoring people in particular conditions had anything to do with that, as opposed to the boat pushbacks. In relation to the pushbacks—

George Brandis: Sorry to interrupt, but if I have not made this clear already, it is absolutely not the case that one element of this policy was the effective element, and another element was not effective. The policy was a policy suite in which all three elements mattered.

Stuart C. McDonald: You have given your analysis of that. Obviously others disagree.

The Chair: Mr McDonald, this will have to be your last question.

Q122 Stuart C. McDonald: You have mentioned that a certain number of boats could not be turned back, because it would not have been safe to push them back. One of several issues with the pushback policy here is that we are talking about small dinghies, and that lives would be put at risk by attempting to push them back. There is nothing in the Australian policy that would have seen Australian vessels putting lives in danger by attempting to push back small dinghies, for example.

George Brandis: No, but because the distances involved are so different. Embarkations from the southern shores of Indonesia, across the Timor sea, were not in dinghies; they were largely in dilapidated wooden fishing boats.

Q123 Mr Robert Goodwill (Scarborough and Whitby) (Con): Welcome, Your Excellency. You said that in 2014 your policies had successfully stemmed the flow of illegal migrants. In September 2015 you announced that you would take 12,000 Syrians and Iraqis into Australia. Do you feel that you would have been in a position to do that, and had the capacity to do that, had you not stemmed the flow of illegal migrants into your country?

George Brandis: I remember that decision very well; it was an NSC decision and I remember the debate as if it were yesterday. I am very proud that Australia did that. Sir, let me answer your question in this way. What we have found in Australia—this is both the view of those who have studied the issue and empirically verified by many public opinion surveys—is that there is a very direct correlation between the public's willingness to accept a big immigration programme, with a big humanitarian and refugee element, and public confidence that the Government are in control of the borders. When the public have that confidence, they back a big immigration programme. When that confidence is eroded, they are less enthusiastic about it.

That sentiment was captured by former Prime Minister Howard in words that became almost a mantra in Australian politics of the day. He said in 2004, "We will always fulfil our humanitarian obligations, but we will decide who comes into this country and the circumstances in which they come." Australia is a big immigration nation. To give some figures, in the year in which the Syrian refugee programme was at its most ambitious, 2016-17, Australia accepted 21,968 refugees under our various humanitarian programmes. We also accepted, under our other immigration programmes—skilled migration; family reunions—183,608 people. More than 200,000 people came that year, of whom about 10% came under humanitarian and refugee programmes.

The numbers have gone up and down a bit. That was the biggest year because of the Syrian element, which was an additional element to the normal humanitarian

and refugee programme. In the most recent year, 2019-20, we accepted 140,366 people—13,171 people under our humanitarian and refugee programme. The numbers over the last several years have fluctuated between more than 13,000 and almost 22,000 per year under our humanitarian and refugee programme. In most of those years that is per capita the most generous humanitarian and refugee programme in the world, second only to Canada.

Q124 Paul Blomfield (Sheffield Central) (Lab): Thank you, High Commissioner, for taking the time to join us. To follow up on my colleague's question about cost, I was looking through some figures from your Department of Home Affairs that suggested that the cost of the offshore programme was about \$1 billion a year. Does that figure seem about right? Individually, the cost is just over \$9,000 per day for every person held offshore.

George Brandis: I do not have the figures in front of me. I am not suggesting that it was not a programme that cost money to implement and administer. It was implemented and administered by foreign Governments: the Governments of Nauru and New Guinea. Nevertheless, a substantial proportion of the funding came from Australia. I am not disputing the figure that you give; you have done the research, sir. I do not have the financial figures, but may I take that question on notice and get them to you?

Q125 Paul Blomfield: Certainly, that would be very helpful, but does that sort of ballpark seem about right? You are saying that it is an expensive programme.

George Brandis: Please do not take from my silence that I am averring that it is right. Certainly, there was a not insignificant cost. I do not dispute that.

Q126 Paul Blomfield: On a different point, is it correct to say that you have not offshored anybody since 2014?

George Brandis: No, I do not think that is right. I have a disaggregated year-by-year figure on the offshoring. It certainly is right, as I said to your colleague before, that it was a front-end-loaded sort of policy, in the sense that once the people smugglers' business had been destroyed and the boats stopped coming, the need for that leg of the policy diminished. But as for the date at which the last of the offshoring was undertaken, I am not in a position to tell you, other than to say that it was in the early part of the policy.

Q127 Paul Blomfield: I took that from a report by the University of New South Wales. The same report said that of the 4,180 people offshored during that peak period between 2012 and 2014, almost half had returned to Australia by 2021. Do you recognise that?

George Brandis: No, I do not.

Q128 Paul Blomfield: So the university is wrong in that?

George Brandis: I am not aware of the report to which you refer. I mean, let's not beat around the bush here—this was a very controversial policy at the time. It became less controversial with the passage of time, for two reasons. One was that it worked. Secondly, the Opposition changed their position from opposition to

the policy to support for it. However, a number of community organisations, universities and various institutions and faculties within universities continued to criticise the policies, which they are perfectly at liberty to do, and a lot of figures were thrown around. I am not familiar with the particular report to which you refer and therefore I cannot verify the data quoted within it.

Q129 Paul Blomfield: Okay. I understand that; we are throwing all sorts of stuff at you. But it was a report published last month by the Kaldor Centre—

George Brandis: The Kaldor Centre—

The Chair: Mr Blomfield, this will have to be the last question, please.

Paul Blomfield: Okay.

George Brandis: The Kaldor Centre is a centre established as an advocacy centre and a research centre to advance the interests of refugees, and it takes a particular point of view. I am not deprecating its statistical or academic rigour at all; I am merely pointing out that it approaches this debate with a particular advocacy point in mind.

Paul Blomfield: I take that point—

The Chair: I am sorry. I said that had to be the last question. I have to try and get everybody in and there are a lot of Members. Minister.

Q130 The Parliamentary Under-Secretary of State for the Home Department (Tom Pursglove): Thank you, Sir Roger. I will be quick, so hopefully the hon. Member might get another go.

Your Excellency, looking back in the Australian context, is it reasonable to think, that if you had stood back and done nothing about this challenge the numbers of people crossing or seeking to cross would have increased, and on less seaworthy vessels?

George Brandis: I think that is an absolutely fair inference to draw, because in the years prior to the introduction of the policy, which was in September 2013, the numbers had escalated, so every year there were more than in the previous year. It almost inevitably follows, given that nothing else would have changed, that the number of those vessels that did not make it and the number of passengers who drowned would have escalated, too.

Q131 Tom Pursglove: How fundamental do you think that offshore processing was in acting as an effective deterrent as part of your wider plan to tackle this challenge?

George Brandis: Well, as I have already said in my evidence, there were three legs, or three elements, to this policy and all of them were essential to it. I do not think you can disaggregate one from another.

Q132 Tom Pursglove: I am interested in wider criminality. What impacts did you assess there to be in the line of finance that these crossings were generating for these criminal gangs? What impact did that have on wider criminality? Was it fuelling other types of criminality in Australia?

George Brandis: It is very difficult to answer that question in a general way. The people-smuggling gangs who were the authors and beneficiaries of this activity were located in Indonesia, primarily. That is not to say that they may not have had connections in Australia, but they were primarily groups that operated within Indonesia, and there were many of them. I am not in a position to generalise from that proposition to what extent they had connections in other countries, including Australia.

Q133 Tom Pursglove: Trying to create a swifter, more efficient, more streamlined processing of applications is fundamental to the plan the Government here are seeking to advance. Was that an element of the work you put in place in Australia, and how important do you think it is, both in acting as a deterrent and having a system that is much more humane and treats people fairly?

George Brandis: As is evident from the statistics I quoted before, we accept an unusually large number of humanitarian and refugee immigration applications for a country of our size. We have an ambitious humanitarian and refugee programme, and we seek to process those applications swiftly and efficiently, but we do say, “You’ve got to come in the front door, and not put yourself in the hands of criminals and put yourself and your children at risk of drowning.”

Q134 Tom Pursglove: Finally, looking back at your experience, the establishment of the policy framework and everything that underpinned it more generally, what in your assessment were the key challenges you faced in delivering on this, and what lessons could the British Government learn from that experience in the work we are doing?

George Brandis: There were logistical challenges, particularly the turn-back operations. It was very challenging for the maritime authorities to do that while at the same time ensuring that nobody’s safety was put at risk. That was one dimension to this, but it is a bit of a different problem because, as one of your colleagues pointed out, here these people come by dinghy. Almost all the people who were trying to come to Australia were coming in decrepit old timber fishing boats, which were much more fragile. That was the difference.

I am not here to instruct or encourage your Parliament on the right policy choice; I am merely here to respond to the questions you have asked me about how a particular set of measures worked for Australia. I have already observed that there are differences as well as similarities in the profile of the problems. However, I would say that undoubtedly the key to this is to put the people smugglers out of business. The way to put the people smugglers out of business is to demonstrate to their potential clientele that they are wasting their money. The way we did that in Australia, and it was a robust policy, was to persuade the potential clientele that, if they came in through the front door as genuine refugees, they would be embraced; but, if they put themselves in the hands of people smugglers, there was no way they would ever end up in Australia.

The Chair: We have time for one final question from Neil Coyle.

Q135 Neil Coyle (Bermondsey and Old Southwark) (Lab): Thank you, Your Excellency, for being with us today. How were the offshore countries selected to be the base for processing, and what work was done with their Governments before opening those centres?

George Brandis: A lot of work was done with the Governments. I was not directly involved in that work, so I am not in a position to speak with particularity in answer to your question, sir, but they were countries in our region that were willing to enter into regional processing agreements with Australia.

Q136 Neil Coyle: And there were no asylum claims from either of those countries to Australia before they were selected as sites?

George Brandis: I am not aware that there were any from either New Guinea or Nauru. Those two countries were never a locus or genesis of the problem.

The Chair: Order. I am sorry, and I must apologise to colleagues who have not been called, but it is a time-limited session—that is what the Committee voted for—and I have to draw it to a close. Commissioner, the Committee is deeply indebted to you; thank you very much for coming in.

Ordered, That further consideration be now adjourned.—(*Craig Whittaker.*)

12.45 pm

Adjourned till this day at Two o'clock.