

Morrison government defeated on medical bill, despite constitution play

Written by Michelle Grattan, Professorial Fellow, University of Canberra

The government has suffered a historic defeat in the House of Representatives, with Labor and crossbenchers passing the legislation facilitating medical transfers from Manus and Nauru by 75-74.

This came after a dramatic last-minute government ploy to try to head off the bill by declaring it was unconstitutional and so should not be considered by the House.

But Labor and the crossbench pressed on, with six of the seven crossbenchers backing the ALP amendment to the bill that had come from the Senate.

They were Kerryn Phelps, on whose proposal the legislation is based, Andrew Wilkie, Cathy McGowan, Rebekha Sharkie, Julia Banks and the Greens Adam Bandt. The other crossbencher Bob Katter voted with the government.

The last times governments were defeated on major substantive votes were the Fadden government in 1941 (on a budget vote) and the Bruce government on legislation in 1929.

Before the bill was considered Speaker Tony Smith tabled correspondence from Attorney-General Christian Porter saying the bill, passed by the Senate last year, contravened the constitution's Section 53.

This provides that the Senate "may not amend any proposed law so as to increase any proposed charge or burden on the people".

The Solicitor-General, Stephen Donaghue, said in an opinion that the bill breached Section 53 because the medical panel it would set up would be paid.

But the opinion also said it was "ultimately for the House of Representatives to decide whether it

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considers the Senate amendments to be consistent” with Section 53, and the matter was not justiciable.

In his letter to Smith, Porter asked the Speaker to keep the Solicitor-General’s opinion confidential but Smith said the House should have it and tabled it with Porter’s letter.

The vote culminated a day of drama as Labor negotiated its amendments to the bill as passed by the Senate with its support.

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These widen the grounds on which a minister could refuse a transfer to cover those with a substantial criminal record, allow the minister up to 72 hours (instead of 24) for making a decision on transfers, and confine the application of the legislation to the present cohort of refugees and asylum seekers.

Labor moved to circumvent the Section 53 issue by adding a further amendment providing that members of the medical panel not be paid.

Leader of the House Christopher Pyne declared Labor and the crossbenchers “don’t care about the Australian constitution”. “The English fought a civil war over this matter,” he said.

Bill Shorten said: “This bill and our amendments are about Australia’s character. It’s about how we treat sick people in our care.”

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Scott Morrison said Labor was “failing the test of mettle ... failing the test of duty to the Australian people. This is now on your head, Leader of the Opposition.”

The final vote came after the government lost procedural votes by the same margin.

The bill has to go back to the Senate to approve the amendments passed in the House.

Morrison told a Tuesday night news conference that the vote had not been unexpected and the government had already been working on contingency plans.

He would have “more announcements to make about the actions and decisions the government will be taking to address now the risk and the threat that Labor and Bill Shorten have created”.

He indicated the government would not frustrate the bill getting royal assent once it passed the Senate. Home Affairs Minister Peter Dutton told the ABC the government would abide by the law.

Morrison dismissed any suggestion that the defeat amounted to a no confidence motion in the government, referring back to Phelps had said. Phelps has consistently emphasised the bill should not be viewed as a confidence matter.

The Prime Minister also played down the historic nature of the defeat, pointing to the Labor government losing a vote on superannuation in 2013.

The government use the Labor success to ramp up its attack on the opposition. In the run up to the vote Morrison has turned up the rhetoric, accusing Labor of undermining offshore processing.

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At his press conference Morrison said that Shorten would also be weak on turning back boats. Shorten “can’t be trusted to do that either,” he said.

Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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