



Refugee Council of Australia

LEGISLATIVE BRIEFING

MIGRATION LEGISLATION AMENDMENT (REGIONAL PROCESSING COHORT) BILL 2016

This Bill was introduced into Parliament on 8 November 2016 and passed the House of Representatives on 10 November 2016.

It is now before the Senate Legal and Constitutional Affairs Committee, which is accepting submissions until **14 November 2016** and is due to report on **22 November 2016**.

This briefing explains the Bill and our key concerns with the Bill.

1. Who does the Bill affect ('the cohort')?

This Bill affects anyone who was taken by the Australian Government to Nauru or Manus Island **after 19 July 2013**, if they were an adult at the time they were first taken there. It also applies to people intercepted on the seas by the Australian Government and transferred to Nauru or Manus Island.

The Bill affects those people now living in Australia who have been transferred from Nauru or Manus Island back to Australia, for medical or other reasons, including the group of people who have remained in Australia following the #letthemstay campaign.

The Bill **does not affect**:

- people seeking asylum in Australia who have not been on Nauru or Manus Island after 19 July 2013, including the so-called 'legacy caseload' of around 30,000 people in the community, or
- people who have arrived on refugee and humanitarian visas through resettlement.

2. What does the Bill do?

The Bill introduces new 'visa bars' into the *Migration Act 1958* (Cth) that effectively prevent this cohort of people from ever making a valid visa application, without the permission of the Minister for Immigration.

The Bill also introduces specific visa bars that invalidate applications for specified visas under the *Migration Regulations 1994* (Cth), including applications for business visitor visas, Electronic Travel Authority visas, Refugee and Humanitarian (Class XB) visas, and combined applications made by their family for other permanent visas.

These bars would apply:

- To visa applications made outside Australia **from 8 November 2016** (when the Bill was introduced) that have not been determined by the time the Bill passes, and
- To visa applications made within Australia on the day the Bill commences (which is the day after Royal Assent).

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An example of how this Bill would affect people is the well-known story of Associate Professor Munjed Al Muderis, MB ChB FRACS, FAOrthA, now a leading surgeon who came to Australia by boat seeking asylum. After getting protection, he later applied to re-enter Australia as a skilled migrant, so that he could bring his mother here. If this Bill had been passed then, he could not have done so.

3. Key concerns

Separation of families

The greatest impact of this Bill will be on those people on Nauru and Manus Island who have been separated from family in Australia, including people seeking protection who came to Australia before 19 July 2013.

For those in Australia who are seeking protection now, they will be granted only temporary protection visas which do not give them the right to resettle their family or even to travel overseas without the permission of the Australian Government. The effect of this Bill is to compound this, so that their family in Nauru or Manus Island will never be able to visit them in Australia either.

Punishing the most vulnerable of people

The effect of this Bill is to punish people for life, simply for seeking protection. Indeed, the Bill targets the most vulnerable group of refugees — people we have forced into indefinite detention in remote places and in awful conditions.

Impact on people seeking protection

There are around 30,000 people seeking protection in Australia who have already suffered through punitive changes in policy, and whose mental health is extremely vulnerable.

For these people, even if the Bill does not directly affect them, their fear that it will and their continuing demonisation in public discourse adds yet another burden on their already fragile mental health.

Unnecessary and unjustified

The Bill itself is entirely unnecessary and unjustified. The Government has suggested that they have introduced this Bill because otherwise these people might be able to enter Australia illegitimately, through (for example) faking marriages with Australians.

Yet the *Migration Act* already contains extensive powers and safeguards to ensure that visas of any kind are obtained legitimately, which are used routinely. Visas are routinely refused or cancelled because there is evidence of an ulterior purpose. This Bill is not limited to fraudulent applications. Instead, it prevents entry even if a person would otherwise meet all the criteria for a visa, simply because this person has been on Nauru or Manus Island.

Repudiating refugee protection, human rights and the rule of law

The Bill adds to the suite of already extreme measures that breach Australia's international legal obligations. By targeting people who come by boat, the Bill would breach Article 31 of the Refugee Convention, which prohibits penalising people seeking asylum for their mode of entry. Indeed, the Bill is effectively repudiating the purpose of the Refugee Convention — to protect people fleeing persecution.

The Bill also entrenches discrimination against people from certain countries, by denying them the right to be treated equally with other visa applicants.

The Bill also undermines the rule of law. The Bill is retrospective, in that it is punishing people for acts they have already committed. The Bill adds to the Minister's ever-growing list of personal powers to allow people to enter, effectively leaving people's lives in the hands of unconfined executive discretion.

The Bill has also been rushed through Parliament, having been passed by the House of Representatives within two days of anyone seeing it, and with a Senate Committee inquiry giving less than two working days to make a submission.

Ending offshore processing is the most urgent task

For far too long, these people have been punished and, despite all the rumours, the Australian Government has not found a resolution for these people. Rather than wasting its energy on this entirely unnecessary and punitive Bill, the Australian Government should get on with ending the indefinite detention and abuse of these people's human rights.