



Refugee Council of Australia

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

INQUIRY INTO THE MIGRATION LEGISLATION AMENDMENT (REGIONAL PROCESSING COHORT) BILL 2016

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 200 organisations and around 1,000 individual members. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the opportunity to provide feedback on the Migration Legislation Amendment (Regional Processing Cohort) Bill. We do however express concern at the very short timeframe provided for submissions into this Inquiry, which has made it very difficult for our members to inform this Inquiry.

We oppose this Bill for the following reasons:

- The Bill would have the effect of preventing some families, who have been separated by the circumstances of their flight, from ever seeing each other again, at least without the personal permission of the Minister
- The Bill punishes the most vulnerable of people by preventing them from ever coming to Australia, even if they meet all the other criteria
- The Bill has caused enormous anxiety among people seeking asylum in Australia, creating a real risk to their already fragile mental health
- The Bill is entirely unnecessary, because the *Migration Act* already contains extensive powers and safeguards to ensure that visas of any kind are obtained legitimately, and
- The Bill undermines refugee protection, human rights and the rule of law.

1. The effect of this Bill

1.1. The proposed 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 also affects those people now living in Australia who have been transferred from Nauru or Manus Island back to Australia, for medical or other reasons.

1.2. 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.

1.3. 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.

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1.4. 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).

1.5. 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, depriving Australians of his much-needed skills.

2. Our concerns

Separation of families

2.1. 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.

2.2. 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. These are children that the Australian Government has, in effect, deprived of parents.

2.3. 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. Surely, these are families that have already suffered enough.

Punishing the most vulnerable of people

2.4. This Bill would effectively prevent anyone we have sent to Nauru or Manus Island from ever coming to Australia, even for a visit, or as a skilled migrant. This effectively punishes people for life, for doing something which is not only legal but also a human right — claiming asylum.

2.5. Even worse, this Bill targets the very people that Australia has already punished the most. This Bill punishes people who have been languishing in Nauru or Manus Island for over three years in indefinite detention in awful conditions. These are people who have been abused and assaulted, and who have tried to kill themselves, as this Committee has already heard, and is currently hearing in another inquiry.

Sending people over the edge

2.6. We are deeply concerned about the effect even the announcement of this Bill has already had on people seeking asylum and refugees in this country. There is an urgent mental health crisis, not only on Nauru and Manus Island, but among those seeking protection within the Australian community. There are people who have been living in our community for over four years who are still waiting for the government to make decisions on their claims. There are around 30,000 people in our community who have lived with fear, uncertainty and hostility for years, waiting for the safety they had hoped for when they came here.

2.7. For these people, even if the Bill does not directly affect them, their fear that it will and their continuing demonisation in the media could be the tipping point that sends them over the edge.

Unnecessary and unjustified

2.8. These effects cannot be justified, because the Bill itself is entirely unnecessary. The Government's main justification appears to be that these people might be able to enter Australia illegitimately, through (for example) faking marriages with Australians.

2.9. 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

2.10. 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. This Article simply recognises the reality that, when you need to flee danger, you can't always wait around to fill out the forms.

2.11. More significantly, the Bill is effectively repudiating the purpose of the Refugee Convention — to protect people fleeing persecution. Rather than protecting, we are now persecuting the very people the Refugee Convention is designed to protect.

2.12. The Bill also repudiates another cornerstone of human rights — the right to equality and protection against discrimination. This Bill entrenches discrimination against people from certain countries, by denying them the right to be treated equally with other visa applicants.

2.13. As in so many other areas of current refugee policy, this 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 once again adds to the continuing pattern of leaving people's rights at the mercy of the Minister's personal discretion. The Bill has also been rushed through Parliament, with having been passed by the House of Representatives within two days of anyone seeing it, and with a Senate Committee inquiry giving people less than two working days to make a submission.

A cruel Bill

2.14. For far too long, these people have been punished for seeking protection. They have committed no crime by claiming asylum, yet they have already suffered years of detention, abuse and neglect. Now, the Australian Government is preventing this small group of people, out of all the people in the world, from even visiting Australia for the rest of their lives. This is a cruel Bill, and should not be passed.

Recommendation 1

RCOA recommends that this Bill should not be passed.