

**AMNESTY
INTERNATIONAL**



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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee Secretary

Submission to the inquiry into the Migration Legislation Amendment (Regional Processing Cohort) Bill 2016

Thank you for the opportunity to provide a submission to the Legal and Constitutional Affairs Legislation Committee inquiry into the Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 [Provisions].

The Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 makes amendments to the Migration Act 1958 (Cth). The Bill amends the Migration Act 1958 and the Migration Regulations 1994 to prevent unauthorised maritime arrivals who were at least 18 years of age and were taken to a regional processing country after 19 July 2013 from ever making a valid application for any type of Australian visa.

The bill would see refugees who have successfully become citizens of other countries, like New Zealand or Canada, permanently prevented from even temporarily visiting Australia to study, to work as doctors, to conduct business or as tourists.

It is Amnesty's position that this proposed law is unnecessary, cruel and contrary to international human rights law.

Amnesty recommends that the bill not be passed as it is not compatible with Australia's international human rights obligations, will have a negative impact on families and children, and is unnecessary for the closure of offshore processing.

1. Breach of Human Rights Law

Amnesty rejects the underlying principle behind the Bill that those individuals who travel by boat to Australia in search of a safe place to rebuild their lives should be discriminated against.

Article 31(1) of the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol, to which Australia is a party, clearly states that countries are prohibited from imposing penalties on people seeking asylum based on their mode of arrival. The proposed ban is clearly punitive in nature.

Refugees need and deserve protection and respect. The basic human right of every person to seek asylum from persecution is not diminished by their mode of arrival.

The bill also violates Australia's international human rights obligations towards families and children, including the obligation to protect family units and not deny close family members from being able to live together.¹ Australia has obligations under Article 3(1) of the UN Convention on the Rights of the Child to ensure that the best interests of the children are a primary consideration in all matters concerning them, regardless of whether the children are people seeking asylum or otherwise. Children have the right not to be separated from their parents, and where separation has occurred States Parties are obliged to consider applications for family reunification in a 'positive, humane and expeditious manner'.²

Whilst the Bill exempts children born in the migration zone or in a regional processing centre, as well as people seeking asylum who were transferred to a regional processing centre when they were under the age of 18 years before 19 July 2013, the Bill does apply to their parents and other members of their immediate families. If passed, the Bill may result in parents or guardians being permanently separated from their children or dependents left in Australia, in flagrant violation of the Convention on the Rights of the Child.³

2. Negative impacts on families

The Bill applies to people found to be refugees, people currently detained on Nauru and in Papua New Guinea, people who are temporarily in Australia for medical treatment, and includes those who accepted a transfer to Cambodia.

It will effectively prevent families from ever living together again, which breaches fundamental human rights law prohibiting the forced separation of children from their parents.

The proposal may negatively impact over 20 families currently split between offshore processing countries and Australia, with children and parents being torn apart, as well as up to 300 people in Australia who are now at the risk of suddenly being deported.

Separating and reuniting families is a serious concern for Amnesty International as a number of those taken to Nauru and Manus have family in Australia. This includes:

- a) Both wives and children who arrived first in Australia (husbands are now on Nauru or Manus) and husbands who arrived first (wives, children on Nauru), and hence include some men/women who have been in Australia for some time and either have or are entitled to Australian citizenship. A number of these families are now living together in the community in Australia (having been transferred back from Nauru and with children attending local schools). They are still being told however that their partner will ultimately have to go back to Nauru;
- b) Others are in Australia (after being transferred back from Nauru) but, for instance, the husband and son are still stuck in Indonesia. (It is important resettlement countries also agree to take family still stuck in transit);
- c) Australian citizens have married people who have been taken to Nauru and there are reports this has also happened on Manus Island. It is important special consideration be given to allow Australian citizens to reunite with family resettled to either the USA or Canada;
- d) Other families are separated, with one family member transferred to Australia for medical treatment while the rest remain on Nauru, freezing the entire families Refugee Status Determination (RSD) application. Sick individuals should not have to travel back to Nauru before resettlement of the whole family to a third country occurs (this includes all cases where refugee assessment has been frozen).

The Bill grants the Minister discretionary power to lift the ban in group or individual cases if he/she believes it is 'in the public interest' to do so. The Statement of Compatibility with Human Rights indicates the discretion may be exercised in order to ensure that Australia's international obligations are met. Amnesty takes little comfort from this discretionary power

¹ See Universal Declaration of Human Rights, art16(3); International Covenant on Civil and Political Rights, art 23; International Covenant on Economic, Social and Cultural Rights, art10; Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 1951, UNdocA/CONF.2/108/Rev.1 (26 November 1952), Recommendation B; Executive Committee of the High Commissioner's Programme, Conclusion No 88(L) on Protection of the Refugee's Family (8 October 1999)

² UN Convention on the Rights of the Child, Article 10(1)

³ Articles 3(1); 8(1); 9(1); and 10(1)

which is non-compellable and entirely subject to the political whims of the Minister of the day. Human rights protections are not, by their very nature, discretionary.

3. Unnecessary for resettlement

Amnesty refutes Government claims that this lifetime ban is a necessary step towards achieving third country resettlements for the refugees and asylum seekers on Nauru and Manus Island.

The quickest, fairest and cheapest way to settle these people, who have already suffered so much as a result of Australia's policies, would be to bring them here to Australia. A durable solution to the Government's failed policy of offshore processing would be to ensure all people are settled safely where they have access to appropriate health care and access to torture trauma services, rather than discriminating against them in perpetuity.

In fact, if passed this Bill would potentially jeopardise the finalisation of further resettlement deals. For example, New Zealand Prime Minister Mr Key has said he couldn't envision a situation where a resettled refugee would gain New Zealand citizenship and not have travel rights to Australia and that he has no intention of having separate classes of citizens.⁴

The recently announced deal with the United States to resettle some of the refugees currently in Nauru is not contingent on this Bill being passed by the Parliament.

4. There are alternatives

There are better alternatives for refugees than a lifetime visa ban, having people drown at sea off our coast, or being hopelessly stuck in open-air prisons run by the government. That's why we need a better plan.

We are a decent country. We've got it in us to show common sense and to solve problems. Both sides of politics have failed at delivering a fair, safe and orderly system for refugees. We can protect our borders while offering safety to those who need our help. And we can benefit from the contributions new Australians make to our community.

Here's a better plan for refugees that the Committee and the Parliament should consider:

1. Boost Australia's aid program to help neighbouring countries better protect and support refugees. When people are legally recognised, have safe accommodation, can send their kids to school, and can work and access health services, they won't be forced to make dangerous journeys to Australia.
2. Make sure the most vulnerable people are resettled within our region and globally. We can reduce the pressure on individual countries by working closely with New Zealand, Japan, the USA, Canada and others to ensure everyone does their bit.
3. Include refugees in existing visa programs. In addition to our core resettlement program, let's recognise the valuable skills and qualifications of many refugees by including them when we allocate student, work & family reunion visas.
4. Assess refugee applications within a defined time period. When people know they will be assessed in an efficient and orderly way, they are less likely to make a dangerous boat journey.
5. Undertake timely search and rescue operations. Instead of hazardous push-backs of boats at sea, we can run proper search and rescue operations to save lives. It's time we stopped letting politicians create havoc with

⁴ <http://www.skynews.com.au/news/top-stories/2016/10/31/nz-says-australia-won-t-accept-refugee-deal.html>

people's lives and got on with a long-term, common sense plan for the fair treatment of refugees. Speak up and help make this happen.

RECOMMENDATIONS

Amnesty International Australia recommends that:

1. the Bill not be passed; and
2. the Government and the Parliament focus its efforts on better policy alternatives for refugees.

Please do not hesitate to contact our Government Relations team via emma.bull@amnesty.org.au should the Committee require any further information.

Yours sincerely

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