

Chapter 1

Introduction

Referral

1.1 The Migration and Maritime Powers Amendment Bill (No. 1) 2015 (Bill) was introduced into the House of Representatives by the Minister for Immigration and Border Protection, the Hon Peter Dutton MP, on 16 September 2015.¹

1.2 On 17 September 2015, pursuant to a report of the Selection of Bills Committee, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 10 November 2015.²

Conduct of the inquiry

1.3 In accordance with its usual practice, the committee wrote to a number of individuals and organisations, inviting submissions to the inquiry by 8 October 2015. Submissions continued to be accepted after that date. Details of the inquiry were made available on the committee's website.³

1.4 The committee received seven submissions to the inquiry, which are listed at Appendix 1. All submissions were published on the committee's website. The committee thanks the Department of Immigration and Border Protection (department) and the organisations that assisted with the inquiry.

Purpose of the Bill

1.5 The Bill seeks to amend the *Migration Act 1958* (Migration Act) and the *Maritime Powers Act 2013* (Maritime Powers Act) to strengthen and clarify the legislative frameworks, 'ensuring that they will be interpreted consistently with original policy intention and operate effectively as intended'.⁴

Overview of the Bill

1.6 The Bill comprises four schedules: Schedules 1–3 propose amendments to the Migration Act; and Schedule 4 contains amendments to the Maritime Powers Act.

1.7 According to the Explanatory Memorandum (EM), the Bill will:

- ensure that when an unlawful non-citizen is being removed from Australia under section 198 of the Migration Act, until that person enters the destination country, the person can be returned to Australia without a visa and will

1 *Votes and Proceedings*, No. 145–16 September 2015, p. 1601.

2 *Journals of the Senate*, No. 118–17 September 2015, pp 3146–3147.

3 See: http://www.apf.gov.au/senate_legalcon, accessed 13 October 2015.

4 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 17 September 2015, p. 19.

- continue to be barred from making a valid application for certain visas (Schedule 1);
- improve coherency and consistency in the character-related provisions of the Migration Act, following the amendments made by the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Character Act) (Schedule 2);
 - ensure that when the Migration Act provides for a visa to cease, that visa will cease whether or not it is in effect at the time (excepting visas to remain in but not re-enter Australia) (Schedule 3);
 - ensure that fast track applicants who are refused protection visas based on certain character or security grounds can apply for merits review in the Administrative Appeals Tribunal (Schedule 3);
 - clarify that when a protection visa application has been made on a person's behalf (for example, because they were a minor at the time), and that visa has been refused, the person cannot make a further protection visa application, irrespective of the grounds on which a new application would be made and irrespective of the grounds stated in the original application (Schedule 3); and
 - confirm that powers under the Maritime Powers Act are able to be exercised in the course of passage through or above the waters of another country in a manner consistent with the 1982 United Nations Convention on the Law of the Sea (Convention) (Schedule 4).⁵

1.8 Schedules 1–4 of the Bill commence the day after receiving Royal Assent, except for Part 1 of Schedule 3 which commences retrospectively on 25 September 2014.⁶ Some sub-items in item 22 of Schedule 2 also have retrospective application.

Consideration by the Parliamentary Joint Committee on Human Rights

1.9 The Parliamentary Joint Committee on Human Rights has deferred consideration of the Bill.⁷ However, the Statement of Compatibility with Human Rights in the EM states that the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.⁸

5 Explanatory Memorandum (EM), p. 1.

6 Migration and Maritime Powers Amendment Bill (No. 1) 2015, cl. 2.

7 Parliamentary Joint Committee on Human Rights, *Twenty-ninth Report of the 44th Parliament*, 13 October 2015, p. 3, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2015/Twenty-ninth_Report_of_the_44th_Parliament, accessed 15 October 2015.

8 EM, Statement of Compatibility with Human Rights, Attachment 1, p. 1.