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Committee Secretary

Senate Legal and Constitutional Affairs Committee

PO Box 6100

Parliament House

CANBERRA ACT 2600

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL AUSTRALIA
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ABN 64 002

Dear Committee Secretary,

Submission to the inquiry into the Migration Legislation Amendment (Regional Processing Cohort) Bill 2019

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 2019 [Provisions]. This submission updates our submission to the previous inquiry examining this Bill, which we made in November 2016.¹

The Migration Legislation Amendment (Regional Processing Cohort) Bill 2019 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 those who have already travelled to the United States of America (USA), Switzerland, the United Kingdom and future countries, for instance if a deal is reached with New Zealand, 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 International 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.

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<https://www.amnesty.org.au/wp-content/uploads/2016/11/2016-11-14-AIA-Submission-on-Proposed-Lifetime-Visa-Ban.pdf>

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.² 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".³

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.⁴

Amnesty International shares the view expressed by others in previous submissions to the inquiry into the Regional Cohort Bill,⁵ that this Bill significantly undermines the very purpose of the 1951 Refugee Convention, which is to protect refugees. Rather it will create further suffering, again discriminating against recognised refugees, many of whom have now spent over 6 years held in the harsh and damaging conditions on Manus Island, in Port Moresby and on Nauru.

² 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)

³ UN Convention on the Rights of the Child, Article 10(1) Articles 3(1); 8(1); 9(1); and 10(1)

⁴ Articles 3(1); 8(1); 9(1); and 10(1)

⁵ See, for instance, the RCOA submission, page 3

https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Regional-Processing-Cohort-Bill-2016_submission_FINAL.pdf

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.⁶

The proposed Bill may negatively impact on a number of families currently split between offshore processing countries and Australia, with children and parents at risk of being permanently torn apart.

The impact on over 1000 people in Australia, brought back for medical treatment and other reasons, has also not been fully considered, given the population of this cohort has grown substantially since the Bill was first proposed. The safety, protection and medical care of these people is not considered in the Bill and could be read to suggest they are now in danger of being suddenly deported. No protections are in place to ensure this extremely vulnerable group will not be subject to further human rights violations.

The government has set diametrically opposing goals; emptying the offshore centres; while at the same time insisting these 1000 or more individuals must return to the same centres the vast majority of this cohort have lived successfully in the Australian community for years.

Amnesty International's prolonged experience of working closely and supporting many in this cohort, shows to us that telling these people that they will never be allowed to return to Australia (even as tourists), will seriously undermine any attempt to convince this group to take up offers to settle in third countries. Instead preferring to remain in indefinite legal limbo in Australia. This is particularly the case for those with family in Australia.

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/Port Moresby) and husbands who arrived first (wives, children who were taken to 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 return to Nauru;
- b) 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 that special consideration be given to allow Australian citizens to reunite with their family.

In our previous submission⁷ we noted concerns with other families who were 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. Concern was raised that sick individuals should not have to travel back to Nauru before resettlement of the whole family to a third country occurs (this included all cases where refugee

⁶ See Submission to previous inquiry by the Kaldor Centre UNSW, p3
https://www.kaldorcentre.unsw.edu.au/sites/default/files/Migration%20Legislation%20Amendment%20%28Regional%20Processing%20Cohort%29%20Bill%202016%20Provisions_Submission_Final%20SENT.pdf

⁷ see: <https://www.amnesty.org.au/submission-proposed-lifetime-visa-ban/>

assessment has been frozen). It is now clear that all of these families have been reunited in Australia, and it is clear that the prospect of them ever returning to Nauru would appear non-existent. (In fact, the government celebrated getting all the children off Nauru in February 2019⁸). Again, it is worth reiterating that the prospect of these families agreeing to resettle elsewhere, with the knowledge they will never ever be able to return to see friends and family in Australia, is seriously undermined if this Bill is passed.

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 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 and potential counter productive

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. Nor, as proven by the numbers already resettled to the USA (and elsewhere), is it necessary to deter future boat arrivals.

To date over 550 individuals have resettled to the USA, with smaller numbers going to Canada and elsewhere. The fact that this Bill was not in place has had a zero impact on boat arrivals. It has also been reported that a further 240, of the just over 700 individuals remaining on Manus and Nauru, are likely to receive offers to the USA in coming months. A decision to accept these offers however could be jeopardised if they feel they would never be able to visit family and friends in Australia, even as tourists.

Further, if passed this Bill would potentially jeopardise the finalisation of future resettlement deals. For example, the previous New Zealand Prime Minister John 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.⁹ Given the current New Zealand Prime Minister, Jacinda Ardern, has reiterated New Zealand's offer to resettle those in PNG and Nauru, it is not worth risking undermining this solution by passing this unnecessary Bill.

It is important to remember that under the John Howard era "Pacific Solution" hundreds of refugees were resettled to New Zealand from Manus and Nauru, again with zero impact on boat arrivals. New Zealand has recently celebrated one such refugee, Abbas Nazari, who has been granted the prestigious Fulbright scholarship to study at Columbia University in New York.¹⁰ Abbas has highlighted how other Tampa refugees, resettled in New Zealand, are now small business owners, home owners, doctors, nurses, public servants, students and keen rugby players.¹¹

The quickest, fairest and lowest cost way to settle these people, who have already suffered so much as a result of Australia's policies, would be to bring them 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.

8

<https://www.sbs.com.au/yourlanguage/burmese/en/article/2019/02/03/last-refugee-children-leave-nauru-calls-mount-address-medical-crisis>

⁹ <http://www.skynews.com.au/news/top-stories/2016/10/31/nz-says-australia-won-t-accept-refugee-deal.html>

¹⁰ <https://www.theguardian.com/world/2019/jun/18/tampa-refugee-taken-in-by-new-zealand-wins-fulbright-scholarship>

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<https://thespinoff.co.nz/society/11-11-2017/as-a-tampa-refugee-i-have-seen-first-hand-the-impact-when-nz-take-moral-leadership/>

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 Australia needs a better plan.

We are a decent country. We've got it in us to show common sense and to solve problems. Australia's recent policies have failed at delivering a fair, safe and orderly system for refugees. Australia 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.

There is 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. Also, ensuring any private sponsorship program is in addition to the government's allocation.
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 playing politics with people's lives and got on with a long-term, common sense plan for the fair treatment of refugees.

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.

Yours sincerely

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Amnesty International Australia