



**Australian  
Human Rights  
Commission**

# Migration Legislation Amendment (Regional Processing Cohort) Bill 2019

Submission to the Senate Legal and Constitutional Affairs  
Legislation Committee

7 August 2019

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## 1 Introduction

1. The Commission makes this submission to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) in relation to the Migration Legislation Amendment (Regional Processing Cohort) Bill 2019 (Cth) (the Bill) introduced by the Australian Government.
2. The Commission welcomes the opportunity to make a submission in relation to this Bill.

## 2 Summary

3. This Bill would amend the *Migration Act 1958* (Cth) to prevent asylum seekers who arrived in Australia by boat or are 'transitory persons'<sup>1</sup> from ever making a valid application for any Australian visa if they were at least 18 years of age at the time of arrival and were taken to a regional processing country after 19 July 2013 (referred to as the 'regional processing cohort').<sup>2</sup> Papua New Guinea (PNG) and Nauru are currently designated as regional processing countries.
4. The Parliamentary Joint Committee on Human Rights observed that the Bill would have the effect of asylum seekers in the 'regional processing cohort' facing a 'permanent lifetime ban from obtaining a visa to enter or remain in Australia'.<sup>3</sup>
5. The Minister would have a personal, discretionary and non-compellable power to determine, if the Minister thinks it is in the public interest, that the proposed statutory bar to making a valid application does not apply to an individual or class of persons.<sup>4</sup>
6. The Explanatory Memorandum accompanying the Bill states that the key objectives of the Bill are to maintain the integrity of Australia's lawful migration programs and discourage hazardous boat journeys to Australia.<sup>5</sup>
7. The Commission considers that the Bill would significantly limit the enjoyment of human rights by people seeking asylum in Australia, specifically in relation to non-discrimination and family rights. In the Commission's view, the Bill does not contain adequate safeguards to prevent breaches of human rights.

8. The Commission also considers that the Bill would limit human rights without an appropriate justification, as a permanent bar on visa applications does not appear to be a necessary, reasonable or proportionate means of achieving the Bill's objectives.
9. The Bill would apply retrospectively in ways that impinge on a number of human rights. In particular, the Bill would have a punitive impact on people who have already been subject to regional processing, for the purpose of deterring other people from seeking to come to Australia by boat in the future. For those who have already been subject to regional processing, there is no way that they could change their behaviour or circumstances to avoid the application of this additional penalty. The Commission considers that this aspect of the Bill constitutes a limitation on human rights that is not necessary, reasonable or proportionate to achieve the Bill's objectives.
10. As such, the Commission recommends that the Bill not be passed.

### **3 Background**

11. A 2016 version of this Bill, the Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 (Cth), was referred by the Senate to the Committee on 10 November 2016 for inquiry and report.<sup>6</sup> That Bill ultimately lapsed.
12. The Commission provided a submission to the inquiry by the Committee on 16 November 2016.<sup>7</sup> This submission is based on our previous submission, given the lapsed 2016 Bill is virtually identical to the current Bill.<sup>8</sup>
13. While a majority of the Committee recommended that the Senate pass the Bill, the majority report of the Committee noted that:

[I]t would be beneficial if the explanatory memorandum clarified in more detail why further measures are necessary beyond those that are already in place to deter unauthorised maritime arrivals; as well as the factors that the Minister should consider in determining whether it is in the public interest to 'lift the bar' on a case by case basis.<sup>9</sup>
14. The Commission considers that this information is vital if an informed decision is to be made about whether the Bill should be passed. The Explanatory Memorandum of the current Bill does not sufficiently address these questions.

15. Dissenting reports were issued by Labor Senators and the Australian Greens.
16. Two other Parliamentary Committees, the Parliamentary Joint Committee on Human Rights and the Senate Standing Committee for the Scrutiny of Bills, also considered the previous Bill and sought further information from the Minister for Immigration and Border Protection.
17. The Parliamentary Joint Committee on Human Rights was 'unable to conclude that the measures in the Bill are compatible with the right to equality and non-discrimination and the right to protection of the family and rights of the child'.<sup>10</sup>
18. The Senate Standing Committee for the Scrutiny of Bills raised concerns about the retrospective application of the Bill and was not satisfied that the Minister for Immigration and Border Protection had provided sufficient justification for this.<sup>11</sup>

## **4 Non-discrimination**

19. Australia has an obligation under article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) to ensure that all persons are treated equally before the law and to prohibit discrimination on a range of grounds.<sup>12</sup>
20. The Commission has expressed concern for many years that Australia continues to maintain a range of policies which discriminate against people seeking asylum and refugees on the basis of their mode of arrival in Australia, specifically where they arrived in Australia by boat or without a valid visa on arrival.<sup>13</sup>
21. The permanent visa ban proposed in the Bill would apply to a specific group of asylum seekers, based on their mode of arrival in Australia and date of transfer to a regional processing country. This results in differential treatment of asylum seekers, by preventing those in the 'regional processing cohort' from ever making a visa application to enter or remain in Australia. The Commission considers that this differential treatment may engage the prohibition on discrimination on the basis of 'other status' under article 26 of the ICCPR.
22. Under article 26, differential treatment on the basis of a protected status can only be justified in circumstances where the distinction is reasonable,

necessary and a proportionate response to achieving a legitimate objective.<sup>14</sup>

23. The Commission accepts that discouraging hazardous journeys and ensuring the integrity of Australia's migration program are legitimate objectives. However, we are concerned that the discriminatory grounds on which the visa ban would be applied are not necessary, reasonable or proportionate to achieving these objectives.
24. The Parliamentary Joint Committee on Human Rights stated that:

[T]he proposal to ban a group of people who have committed no crime and are entitled as a matter of international law to seek asylum in Australia ... from making a valid Australian visa application is *a severe and exceptional step*.<sup>15</sup>
25. The Commission agrees with this assessment. Given the 'severe and exceptional' impact of the Bill on the exercise of human rights, only a very strong justification could bring the Bill within the scope of Australia's international law obligations.
26. The group to which the permanent visa ban applies is already prohibited from being resettled in Australia. On 19 July 2013, the then Prime Minister Kevin Rudd announced that people who arrived in Australia by boat after that date would be subject to offshore processing and had no prospect of being resettled in Australia.<sup>16</sup>
27. On 25 September 2014, the then Minister for Immigration and Border Protection, the Hon Scott Morrison MP, announced that this position would change following the passage of the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth) (Legacy Caseload Bill).<sup>17</sup> After the passage of that Bill, asylum seekers who arrived in Australia by boat on or prior to 31 December 2013 and who had not already been taken to Nauru or Manus Island would have their claims for protection assessed in Australia. However, those who had already been taken to a regional processing country would not be resettled in Australia.
28. The reasons given by Prime Minister Rudd for establishing the policy that this group of people would not be resettled in Australia were that Australia needed to 'protect our orderly migration system and the integrity of our borders' and 'to protect lives by dealing robustly with people smugglers'.

The Prime Minister did not say that it was necessary to prevent this group of people from ever applying for a visa, even if they were resettled in another country, in order to achieve these objectives.

29. The reasons given by the Government for continuing this policy (albeit in relation to a smaller cohort) was that it was ‘a necessary part of our border protection regime’. At the time the then Minister introduced the Legacy Caseload Bill, he said:

[T]he measures I introduced today into the House of Representatives add to that border protection regime already in place and honours our election commitments. They are part of this broader system that is regional deterrence working with those around our region to stop people coming into the region and getting towards Australia. ... Turn back operations have been the key factor in ensuring that these boats don’t come to Australia and the bill I have introduced today addresses measures in relation to turn backs. Offshore processing and offshore resettlement are a key part of that package. ... And denying permanent protection visas for those who already arrived in Australia. That is the package.<sup>18</sup>

30. The Government did not suggest that it was a necessary part of the package or the system of regional deterrence to prevent this group of people from ever applying for a visa, even if they were resettled in another country.
31. The Explanatory Memorandum does not explain why it is necessary to ban this cohort from ever making a valid application to enter or remain in Australia in order to achieve the objectives that were previously said to have been achieved through other means.
32. The Explanatory Memorandum also does not explain how the existing border protection regime has been shown to be inadequate for the maintenance of the integrity of Australia’s lawful migration or the discouragement of hazardous journeys to Australia such as to require this new measure.
33. The Commission therefore considers that the limitations on the right to non-discrimination arising from this Bill have not been shown to be reasonable, necessary or proportionate to their aims.
34. The Commission further notes that policies that have the effect of penalising those who seek to enter Australia without a visa for the purpose

of seeking asylum cannot be a legitimate objective under international law.<sup>19</sup>

35. The Commission is concerned that this Bill imposes a penalty on those who seek to enter Australia unlawfully for the purpose of seeking asylum, and that this may be an unlawful penalty in contravention of article 31(1) of the *Convention Relating to the Status of Refugees*.<sup>20</sup>

## **5 Protection of the family and children**

36. Australia has obligations under articles 23(1) of the ICCPR and 10(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) to afford protection and assistance to the family as the natural and fundamental group unit of society.<sup>21</sup>
37. The UN Human Rights Committee has affirmed that article 23 of the ICCPR places positive obligations on States Parties to 'adopt legislative, administrative and other measures' to ensure the protection provided for in that article.<sup>22</sup>
38. In relation to children, Australia has an obligation under article 3 of the *Convention on the Rights of the Child* (CRC) to ensure that in all actions concerning children, the best interests of the child be a primary consideration; and to 'take all appropriate legislative and administrative measures' to 'ensure the child such protection and care as is necessary for his or her wellbeing'.<sup>23</sup>
39. Australia also has obligations under article 17(1) of the ICCPR and article 16(1) of the CRC not to subject anyone to arbitrary or unlawful interference with their family.<sup>24</sup> In the context of the ICCPR, the UN Human Rights Committee has stipulated that any interference with family life must be 'reasonable in the particular circumstances'.<sup>25</sup>
40. Finally, Australia has obligations under article 10(1) of the CRC to treat applications by a child or their parents for family reunification in a positive, humane and expeditious manner.<sup>26</sup>
41. The Statement of Compatibility with Human Rights acknowledges that where a person in the 'regional processing cohort' has family members who have been granted a visa to enter or remain in Australia that 'this may result in separation, or the continued separation, of a family unit'.<sup>27</sup>



42. The Commission is aware of cases in which people taken to a regional processing country had relatives (including, in some cases, immediate family members) living in Australia. The proposed permanent visa ban may prevent these individuals from ever travelling to Australia for the purpose of family reunification. The Commission is therefore concerned that the visa ban could lead to the prolonged or permanent separation of these families.
43. While the proposed permanent visa ban would not apply to people who were under 18 at the time they were first taken to a regional processing country, the Commission is concerned that the parents and other adult relatives of these children would still be subject to the permanent ban, which could in turn interfere with family unity.
44. The Commission is concerned that the Bill may operate to interfere with family unity, in a manner contrary to the best interests of any affected children. This may lead to prolonged or permanent separation of families.
45. The Commission does not accept that the objective to 'discourage persons from attempting hazardous boat journeys with the assistance of people smugglers'<sup>28</sup> would be undermined by facilitating reunification of the small (and finite) number of families who face family separation. The Explanatory Memorandum does not provide evidence to establish that the proposed measures that may separate families are likely to be effective to achieve the Bill's stated objective to discourage boat journeys.
46. The Commission recently recommended that where members of the same family unit are subject to different policy settings due to having arrived in Australia on different dates, the Department of Home Affairs should implement strategies to harmonise their status.<sup>29</sup> This Bill would make it even harder for families separated by different policy settings to ever reunite.
47. The Statement of Compatibility with Human Rights notes that the Bill includes provisions allowing the Minister to exercise discretionary powers to lift the visa bar to protect family unity. It states that this discretion 'could' be exercised where the human rights of children or families would otherwise be breached.<sup>30</sup> However, the Commission considers that a non-compellable, non-reviewable discretionary power is insufficient to safeguard the rights of children and families. In the Commission's view, such a process cannot ensure consistency or timeliness in decision-making. In addition, the Minister does not have a duty to consider whether to

exercise these powers, even in cases where Australia's human rights obligations are clearly engaged.

48. The Commission also notes that the Minister's discretionary powers are to be guided by a broad public interest test. The Minister is not explicitly required to consider the best interests of the family concerned (or of any children who may form part of that family), nor Australia's international obligations in relation to the family unit.
49. As such, the Commission considers that the Bill may result in breaches of Australia's international obligations to protect and assist the family, ensure the best interests of the child, avoid arbitrary inference with the family and ensure the expeditious reunification of children and parents.

## **6 Justifiable limitations?**

50. As outlined above, the Commission considers that the permanent bar on visa applications proposed in this Bill could significantly limit the enjoyment of human rights by people who have sought asylum in Australia. In order for these limitations to be justifiable under international human rights law, they must be a necessary, reasonable and proportionate means of achieving a legitimate objective.<sup>31</sup>
51. The Commission acknowledges that the Bill's objectives are legitimate. However, it is unclear how a permanent bar on visa applications is a necessary or proportionate measure in the circumstances.
52. Under current Government policy, all asylum seekers who attempt to enter Australia by boat are either turned back at sea or have their claims processed in third countries without the prospect of permanent settlement in Australia. The Explanatory Memorandum does not provide evidence to demonstrate that the introduction of a retrospective visa bar is likely to have an additional deterrent impact on people who may be currently considering a boat journey to Australia, over and above these existing deterrence measures.
53. In addition, the proposed bar on visa applications would continue to apply for the foreseeable future. The Commission questions whether there is a rational connection between deterring hazardous journeys in the current context, and preventing a person from entering Australia, for any purpose or length of time, potentially decades from now. It is unclear, for example,

how preventing a former refugee from visiting Australia as a tourist 20 years in the future would act to discourage people currently fleeing persecution from attempting a hazardous journey to Australia.

54. The broad and permanent nature of the visa bar also raises questions relating to proportionality. The Commission notes, for example, that the proposed bar appears to be considerably more severe than existing visa application bars for people who have breached their visa obligations.
55. A temporary visa holder who overstays their visa, provides false information to the Department of Home Affairs, is convicted of a criminal offence in Australia or violates their visa conditions would generally face a re-entry ban of up to three years.<sup>32</sup> In these cases, a three-year bar is evidently considered sufficient to maintain the integrity of Australia's migration programs, even in cases where the person concerned may have intentionally breached their visa conditions.
56. The amendments proposed in the Bill, however, would impose a permanent bar on individuals who arrived in Australia without a visa, but may otherwise have fully complied with the Department and with the conditions of any visas they have been granted. It is not clear to the Commission that such a restrictive measure, and one which is seemingly incongruous with existing practice, would be a proportionate means of achieving the Bill's objectives. We note that the Explanatory Memorandum does not indicate why the Bill's objectives could not be achieved through any less restrictive means.
57. The Commission also notes that international human rights law generally sets a high threshold for justifying measures which limit the enjoyment of human rights. Such measures are often only permissible in circumstances where they are necessary to protect fundamental interests, such as national security, public order, public health or morals, or the rights and freedoms of others. The Commission is concerned that the justification for the Bill may not reach a sufficiently high threshold to be considered proportional in the circumstances.
58. The Commission also notes that the Minister already has a range of powers under the Migration Act to refuse visa applications in various circumstances. It is unclear why these existing powers are insufficient to achieve the Bill's objectives.

59. As such, the Commission considers that the permanent visa bar proposed in the Bill lacks an appropriate justification for the limitation of human rights.

## **7 Retrospective application**

60. The Commission considers that the Bill will have retrospective application that adversely affects the human rights of individuals in the 'regional processing cohort'.

61. Adults who are currently subject to regional processing arrangements or have left a regional processing country and are in another country, will be automatically deemed members of the 'regional processing cohort' as a result of past actions that they cannot change. This will include people assessed as refugees who have been resettled in the United States.

62. Unlike those who are taken to a regional processing country in the future, those already subject to regional processing were never placed on notice that they will be barred for life from making a valid application for an Australian visa.

63. The Scrutiny of Bills Committee noted that those taken to a regional processing country prior to the commencement of the Bill

cannot avoid the adverse consequences that apply through the operation of the bill and were not aware that this law was applicable at the time they sought to make the journey to Australia.

It is a basic value of the rule of law that, in general, laws should only operate prospectively (not retrospectively). This is because people should be able to guide their action on the basis of fair notice about the legal rules and requirements that will apply to them.<sup>33</sup>

64. The Commission considers that the measures in this Bill go beyond the stated object of these measures to 'codify existing government policy announced on 19 July 2013 that nobody transferred to a regional processing country after that date would be settled in Australia'.<sup>34</sup> Not only would the Bill prevent people in the 'regional processing cohort' from resettlement in Australia, but it would also prevent them from applying for any type of Australian visa in the future, including tourist, visitor or business visas.

65. The Commission also does not consider that the Bill's retrospective adverse effect on human rights is necessary, reasonable and proportionate to prevent hazardous boat journeys and irregular migration.
66. The Commission agrees with the assessment of the Senate Standing Committee for the Scrutiny of Bills that 'for people who have already undertaken such a journey, it seems that the proposed law can only play a punitive, rather than deterrent, function'.<sup>35</sup>
67. The Commission's concerns about the retrospective application of the current Bill are heightened as a result of the past practice of the Parliament in legislating retrospectively in the area of migration law. Regular resort to retrospective legislation undermines public confidence in the law.<sup>36</sup>

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<sup>1</sup> 'Transitory person' is defined in the *Migration Act 1958* (Cth) s 5(1).

<sup>2</sup> See proposed subsection 5(1) of the *Migration Act 1958* (Cth) which defines members of the 'regional processing cohort.'

<sup>3</sup> Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, Report 9 of 2016, 22 November 2016, 19 [1.58]. At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2016/Report\\_9\\_of\\_2016](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2016/Report_9_of_2016)>. While that Committee was scrutinising a previous version of the Bill, the observation would apply equally to the current Bill.

<sup>4</sup> See for example proposed sections 46A(2AB)-(2AC) and 46B(2AB)-(2AC).

<sup>5</sup> Explanatory Memorandum, Migration Legislation Amendment (Regional Processing Cohort) Bill 2019 (Cth), 22-23.

<sup>6</sup> Parliament of Australia, *Migration Legislation Amendment (Regional Processing Cohort) Bill 2016*, (Web page) <[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5754](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5754)>.

<sup>7</sup> Australian Human Rights Commission, Submission No 28 to the Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 [Provisions]* (16 November 2016). At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/RegionalProcessing2016/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/RegionalProcessing2016/Submissions)>.

<sup>8</sup> Items 31 – 33 in the current Bill did not appear in the 2016 version of this Bill. These items seek to amend 2.08AAA of the *Migration Regulations 1994* (Cth) to ensure that those in the 'regional processing cohort' cannot be added as family members to any applications for Temporary Protection Visas or Safe Haven Enterprise Visas.

<sup>9</sup> Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 [Provisions]* (Report, 22 November 2016) 13 [2.32].

At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/RegionalProcessing2016/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/RegionalProcessing2016/Report)>.

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- <sup>10</sup> Parliamentary Joint Committee on Human Rights, *Human Rights scrutiny report*, Report 2 of 2017, 21 March 2017, 89 [2.121]. At: <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2017/Report\\_2\\_of\\_2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2017/Report_2_of_2017)>.
- <sup>11</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2017*, 8 February 2017, 87 -93. At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Bills/Scrutiny\\_Digest/2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest/2017)>.
- <sup>12</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 26.
- <sup>13</sup> See Australian Human Rights Commission, *Asylum Seekers, Refugees and Human Rights: Snapshot Report – 2<sup>nd</sup> edition* (Report, March 2017). At <<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/asylum-seekers-refugees-and-human-rights-0>>.
- <sup>14</sup> Parliamentary Joint Committee on Human Rights, *Guidance Note 1: Drafting statements of compatibility* (December 2014) 2, 4. At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Guidance\\_Notes\\_and\\_Resources](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources)>.
- <sup>15</sup> Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, Report 9 of 2016, 22 November 2016, 16 [1.60] (emphasis added). At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2016/Report\\_9\\_of\\_2016](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2016/Report_9_of_2016)>.
- <sup>16</sup> The Hon Kevin Rudd MP, Prime Minister, 'Transcript of broadcast on the Regional Resettlement Arrangement between Australia and PNG' Media Release, 19 July 2013. At <http://pandora.nla.gov.au/pan/79983/20130830-1433/www.pm.gov.au/press-office/transcript-broadcast-regional-resettlement-arrangement-between-australia-and-png.html> (viewed 15 November 2016).
- <sup>17</sup> The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Restoring TPVs to resolve Labor's legacy caseload' (Media Release, 25 September 2014). At <<http://pandora.nla.gov.au/pan/143035/20141222-1032/www.minister.immi.gov.au/media/sm/2014/sm218127.htm>>.
- <sup>18</sup> The Hon Scott Morrison MP, Minister for Immigration and Border Protection, 'Reintroducing TPVs to resolve Labor's asylum legacy caseload, Cambodia' (Press conference, Canberra, 26 September 2014). At <<http://pandora.nla.gov.au/pan/143035/20141222-1032/www.minister.immi.gov.au/media/sm/2014/sm218131.htm>>.
- <sup>19</sup> *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) art 31(1).
- <sup>20</sup> See Parliamentary Joint Committee on Human Rights, *Human Rights scrutiny report*, Report 2 of 2017, 21 March 2017, 88-89 [2.114 – 2.115, 2.121]. At: <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2017/Report\\_2\\_of\\_2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2017/Report_2_of_2017)>; Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, Report 9 of 2016, 22 November 2016, 18 [1.70]. At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2016/Report\\_9\\_of\\_2016](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2016/Report_9_of_2016)>.
- <sup>21</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 23(1); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 10(1).

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- <sup>22</sup> Human Rights Committee, *General Comment No. 19: Article 23 (The Family)*, UN Economic and Social Council, 39<sup>th</sup> sess (27 July 1990) [3].
- <sup>23</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3.
- <sup>24</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 17(1); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 16(1).
- <sup>25</sup> United Nations Human Rights Committee, *General Comment No.16: (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation)*, 32<sup>nd</sup> sess, UN Doc HRI/GEN/1/Rev.9 (Vol I) (8 April 1988) [4].
- <sup>26</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 10(1).
- <sup>27</sup> Explanatory Memorandum, Migration Legislation Amendment (Regional Processing Cohort) Bill 2019 (Cth), 24.
- <sup>28</sup> Letter from the Hon Peter Dutton MP, Minister for Immigration and Border Protection, to the Parliamentary Joint Committee on Human Rights dated 19 January 2017, Appendix 3. At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2017/Report\\_2\\_of\\_2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2017/Report_2_of_2017)>.
- <sup>29</sup> Australian Human Rights Commission, *Lives on Hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) 89. At <<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>30</sup> Explanatory Memorandum, Migration Legislation Amendment (Regional Processing Cohort) Bill 2019 (Cth), 24.
- <sup>31</sup> Parliamentary Joint Committee on Human Rights, *Guide to human rights*, 8 [1.22] and 17 [1.54]. At <[http://www.aph.gov.au/~media/Committees/Senate/committee/humanrights\\_ctte/resources/Guide\\_to\\_Human\\_Rights.pdf?la=en](http://www.aph.gov.au/~media/Committees/Senate/committee/humanrights_ctte/resources/Guide_to_Human_Rights.pdf?la=en)>.
- <sup>32</sup> Department of Home Affairs, Re-entry bans fact sheet (n.d.). At <<https://immi.homeaffairs.gov.au/what-we-do/status-resolution-service/re-entry-ban>>.
- <sup>33</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2017*, 8 February 2017, 88 [2.142]. At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Bills/Scrutiny\\_Digest/2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest/2017)>.
- <sup>34</sup> Letter from the Hon Peter Dutton MP, Minister for Home Affairs, to the Senate Standing Committee for the Scrutiny of Bills dated 21 December 2016, Appendix 2. At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Bills/Scrutiny\\_Digest/2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest/2017)>.
- <sup>35</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2017*, 8 February 2017, 88 [2.142]. At <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Bills/Scrutiny\\_Digest/2017](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest/2017)>.
- <sup>36</sup> For other examples of migrations laws that have been passed with retrospective effect that interfered with the rights of individuals to their detriment, see Australian Human Rights Commission, Submission No 14 to the Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Migration (Validation of Port Appointment) Bill 2018* (2 September 2018). At <<https://www.humanrights.gov.au/our-work/legal/submission/migration-validation-port-appointment-bill-2018>>.