

Subject: Migration and Maritime Powers Legislation Amendment
Date: Friday, 24 October 2014 4:30:27 PM

Migration and Maritime Powers Legislation Amendment

(Resolving the Asylum Legacy Caseload) Bill 2014

Dear Senate Legal and Constitutional Affairs Legislation Committee,

My name is Angela Weekes and I am writing to express my concerns about the aforementioned bill. As is outlined below by the ASRC there are many reasons to which this Bill is concerning.

As a citizen of Australia I am appalled at the way in which the government has been handling this situation and is putting the lives of many innocent people in danger. I am friends with many people who are currently seeking asylum and waiting for their claims to be processed and have seen the damage that these policies are having on their mental state and health of life.

I hope you also see how damaging this Bill is, and that it gives a disproportionate amount of unaccountable power to those which we the citizens do not think is just for them to have.

Thank you for your time.

Regards,

Angela Weekes

The ASRC has grave concerns about the Government's proposed *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* and its impact on our nation.

We strongly oppose the Bill on two key principles:

1. **Abuse of Power** – It will see the Minister give himself an unprecedented level of power to make life or death decisions about individual asylum seeker cases, without court oversight.
2. **Harm to People** – It will cause significant mental suffering and see people returned to danger,

persecution, torture and death in their home countries.

Our concerns are based on 13 years of experience working with up to 1500 asylum seekers each year.

We have detailed some of our key concerns below, based on the above principles. This is by no means an exhaustive list of issues that the ASRC has identified in relation to this large and complex Bill. We are available at any time to provide further information on our concerns.

The proposal to re-introduce temporary visas will harm refugees

1. The Abuse of Power:

The Bill provides that people who arrive by boat and are found to be refugees will **never** be offered permanent protection in Australia. Instead they will be offered a Temporary Protection Visa (TPV) or Safe Haven Enterprise Visa (SHEV).

Temporary Protection Visas are used globally in genuinely temporary situations, such as following disasters or during short-term conflict.

A Government expert panel on asylum seekers has noted that: *'More of the world's refugees are in protracted exile than ever before, and for longer periods.'*

2. The Harm:

"TPVs are a kind of torture. Your body is released; you can walk on the street, walk in the city, but mentally you're not released." – Former TPV holder

TPVs were trialled in Australia from 1999 to 2008 and proved to be harmful, ineffective, wasteful and cruel.

During this period, 11,206 refugees were placed on TPVs, with 90 per cent eventually given permanent protection, proving that the vast majority of asylum seekers coming to Australia need long-term protection.

The ASRC witnessed first-hand the devastating human impact of TPVs during this time.

People:

- Lived in anxious uncertainty, forced to re-prove their refugee status every few years
- Suffered serious mental health issues because of uncertainty and fear for their future safety
- Struggled to find stable employment, forcing them into a cycle of poverty and disadvantage
- Lived with constant heartache and worry because they weren't allowed to bring their partners and children to Australia and were banned from travelling overseas to see them
- Were unable to fully settle into the Australian community and participate in social, employment and educational opportunities

The Bill allows the Government to ignore our international obligations under the Refugee Convention, which will see people returned to danger

1. The Abuse of Power

The Government is seeking to remove most references to the 1951 Refugee Convention in the Migration Act and instead replace them with its own re-interpreted definitions of Australia's refugee obligations.

While the Government declares these laws are compliant with international maritime and refugee law, they are simultaneously seeking to remove their obligation to be bound by those responsibilities under Australian law.

This strips away decades of legal precedent in Australia and turns our back on our role in the global community.

2. The Harm

Australia's commitment to our human rights and *non-refoulement* obligations are entrenched in our current robust and fair refugee determination system.

The Bill removes these safeguards for asylum seekers, as well as denying them access to legal representation and protection from serious harm.

This will lead to refugees being returned to situations of danger, including torture, in breach of Australia's current law and our *non-refoulement* obligations.

Introducing a 'fast-track' refugee determination process will see people returned to danger because they won't be given a fair hearing

1. The Abuse of Power

Despite the fact that Australia has an existing comprehensive refugee determination process, the Bill establishes another parallel process for reviewing refugee decisions, under which all power will rest with the Minister. The Minister alone will decide whether a person's case is to be reviewed, as well as the outcome of any review.

The Minister's decision will be based on initial paperwork only, with people denied the chance for a hearing or to provide new information.

Such a perfunctory review process risks vulnerable people slipping through the cracks and being sent home to danger.

The Bill also sets a dangerous precedent in terms of providing the Minister with unchecked power to personally determine people's fates.

2. The Harm

The Bill establishes a 'fast track' refugee determination process, undermining our current robust and fair system. It is akin to a person being put in the hot seat for a game show-style mad minute interrogation.

While the ASRC supports the efficient processing of refugee claims, the so-called 'fast-track' process

undermines people's right to a fair hearing, forcing them to make their case in a compromised time-frame with a brief, cursory assessment of life and death decisions.

This significantly increases the likelihood of sending people back to a situation of grave danger.

This fast-track process is based on a UK model, which was recently found by the UK High Court to be unlawful, with Mr Justice Ouseley stating that *'the DFT as operated carries an unacceptably high risk of unfairness'*.^[1]

It found failings at various stages of the process where survivors of torture, victims of trafficking and other vulnerable people were not identified for protection.

The Bill unfairly caps the number of permanent protection visas issued each year, leaving refugees in limbo

1. The Abuse of Power

The Minister will unilaterally decide how many permanent protection visas will be issued each year, and will be able to chop and change this number at any time.

2. The Harm

A cap on the number of protection visas issued each year will deny refugees the chance to get on with their lives and leave them in a state of anxious limbo, as they wait for their number to come up in what is effectively a 'visa lotto'.

Australia has a fair, reasonable and efficient refugee determination process that has served us well over many decades. This legislation seeks to dismantle that system and deny refugees the right to natural justice and protection.

There are around 27,500 asylum seekers and refugees living in our community. They could be processed and settled efficiently under the existing system without the need for draconian, politically motivated legislation.

Ange Weekes
Urban Neighbours of Hope (UNOH)