

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

14 November 2016

Dear Chair,

**RE: Migration Legislation Amendment (Regional Processing Cohort) Bill 2016**

UNICEF Australia has recently welcomed the announcement of the Turnbull Government that an arrangement has been reached with the United States which will result in the resettlement of refugees currently on Nauru and Manus Island ('US-Australia Arrangement'). As multiple independent investigations and inquiries have evidenced<sup>1</sup>, offshore processing is not a sustainable or safe option for children and does not provide a pathway for children and families to start rebuilding their lives.

UNICEF Australia understands that the Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 seeks to introduce a lifetime ban on 'unauthorised maritime arrivals' and who were taken to a regional processing country after 19 July 2013 (the 'designated regional processing cohort') from making a valid application for an Australian visa. We understand that this Bill is a corollary to the US-Australia Arrangement.

UNICEF Australia does not support the proposed amendment to *Migration Act 1958*. The proposed ban cannot be considered a reasonable, proportionate or necessary measure. It creates a life-long prohibition on entry into Australia based on the timing and mode of arrival of the person/s seeking asylum. It is highly questionable whether such a measure is consistent with Australia's obligations under international human rights law.

While we acknowledge that the Bill excludes children from the operation of the ban, and support such an exclusion if the amendment is to be passed by Parliament, children can still be adversely affected by the ban because it will likely interfere with, and potentially prevent family reunification into their adulthood. Further, during 2013 and 2014 UNICEF Australia raised concerns with the Department regarding age determination processes and their accuracy. Namely that a number of the age determinations were not conducted in a way that could be considered accurate, duly comprehensive (including medical, psychosocial, social, environmental and cultural information) safe and dignified. In line with international practice<sup>2</sup>, in cases of doubt the person claiming to be less than 18 years of age should provisionally be treated as such. In other words, children who did not have a clear age determination as they were

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<sup>1</sup> Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre at Nauru. 2014. View at: <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf>, and multiple Senate Inquiries.

<sup>2</sup> OHCHR. 2005. *Treatment of unaccompanied children and separated children outside of their country of origin*. View at: <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf> and

transferred to a Regional Processing Centre should be regarded as children at that time, and subsequently be exempted from this proposed amendment.

Although we note that the Minister has to lift the bar to allow a person within the designated cohort to make a valid application, UNICEF Australia is of the view that such is not sufficient to ensure full and consistent adherence with Australia's human rights obligations. At a minimum, we recommend additional prescribed exclusions to the operation of the bar. This could include, for example, where the individual concerned has family members in Australia (particularly children) and/or it is otherwise in the best interests of a child (wherever residing) for a person to be granted an Australian visa.

Additionally UNICEF Australia notes a longstanding concern regarding children and families who are subject to naval intervention (boat turn backs) and who are returned potentially to situations of detention, other harm and an absence of adequate protection and support. This practice also creates significant risk of Australia breaching our refoulement obligations. We highlight the need for proactive measures to establish and adequately fund a regional protection framework with South East Asian countries to create (i) safer migration pathways and (ii) effective protection and support while asylum seekers and refugees are waiting for durable solutions. For additional information regarding this recommendation please refer to the UNICEF Australia and Save the Children Australia *At What Cost?* report at:

<http://www.unicef.org.au/Upload/UNICEF/Media/Documents/At-What-Cost-Report.pdf>

Should you wish to discuss this correspondence further, please contact Ms Amy Lamoin, Head of Policy and Advocacy,

Kind Regards

**Tony Stuart**  
Chief Executive Officer  
**UNICEF Australia**