

BITA VISITORS GROUP SUBMISSION

MIGRATION LEGISLATION AMENDMENT (REGIONAL PROCESSING COHORT) BILL 2019

The BITA (Brisbane Immigration Transit Accommodation) Visitors Group is a community organisation of volunteers, who provide friendship and support for refugees held in immigration detention in Brisbane.

Members of the BITA Visitors Group have serious concerns about the Migration Legislation Amendment (Regional Processing Cohort) Bill 2019 and are glad to have the opportunity to address this.

We wish to oppose this Bill in the strongest of terms.

Our opposition is on the following grounds:

1. The Minister's rationale for the introduction of the Bill is disingenuous, given that some members of the cohort have been granted visas already, with no subsequent resumption of boat arrivals.
2. Human rights concerns: contravention of the ICCPR
 - Article 17, 23 and 24
 - Article 6,7
 - Article 26
 - Article 9
3. Concerns about transparency and timely action from the Ministers Office
4. The mental health impact on the cohort who have no valid path for resettlement
5. The financial impost of the continuation of mandatory detention on the Australian people
6. The obstruction of Australian citizens who wish to provide community resettlement for this group
7. The loss of skills and employment this cohort can offer to Australia
8. The risk to Australia's international reputation of being a fair, free and compassionate society

An explanation of these points is as follows:

1. The history of the current offshore detention system in the Minister's speech is noted. We mourn the loss of life that occurred with the influx of refugees arriving by boat. We are glad to see that some of the actions of Operation Sovereign Borders, combined with a decrease in the "push" factors of the global political environment, has ended these deaths. However, we contend that legislating the refusal of visas to the cohort sent for off-shore processing will have no impact on boat arrivals, given that the ABSENCE of such a law until now has not prompted their return. Indeed, some members of the cohort have already been granted visas, and yet no boats have arrived. We do not think this is an issue that it is helpful to treat in a politically partisan fashion and there appears to be no solid practical reason for the Bill aside from an attempt to gain political advantage.

2. We do not agree with the Minister's contention that the Bill is compatible with Human Rights. The Explanatory Memorandum attached to the Bill already concedes that the Bill violates Articles 17(1), 23(1) and 24 of the International Covenant on Civil and Political Rights (ICCPR) as well as Article 3 and Article 10 of the UN Convention on the Rights of the Child (UNCRC). It also acknowledges the potential conflict with Article 6 and 7 of the ICCP and Article 3 of the Convention Against Torture (CAT).
The "solution" offered to mitigate these breaches is Ministerial discretion. We have grave concerns about this, as detailed in point 3 of this submission.

Furthermore, we disagree with the assessment that Article 26, which prevents differential treatment of a group (in this case the designated "regional processing cohort") does not apply because the treatment is for a "legitimate purpose" and is "reasonable and proportionate". We believe this Bill is discriminatory, illegitimate and contravenes Article 26.

The Bill refers to people who have been taken or are taken in the future, to a regional processing country after 19 July 2013. Use of this date acknowledges there are people who have been forcefully detained for six years. The ongoing mandatory detention of legitimate refugees and asylum seekers has a devastating impact on the physical and mental health of these vulnerable people, and clearly violates Article 9 of ICCPR. The Government and Opposition have not provided any viable pathway to safety for these people. The Bill closes the only pathway still open to them to obtain freedom.

3. The Bill creates a law that is almost totally reliant on Ministerial discretion, with wording such as ..'provides that the power to make, vary or revoke a determination may only be exercised by the Minister personally', 'the Minister does not have a duty to consider whether to exercise these powers', 'the Minister to determine, if he or she thinks it in the public interest'. Our laws and processes ensure decisions are made fairly, transparently and in consultation with relevant government departments. Ceding all power to any Minister creates a dangerous and anti-democratic situation. History regularly shows us that corruption and persecution of minorities easily happens when this type of ultimate power is given over to individuals. This Bill allows the circumvention of accountability, which is a cornerstone of representative democracy.

A further concern with the reliance on Ministerial discretion to ensure the meeting of our human rights obligations is the inefficiency that has characterised the Department of Home Affairs over the duration of the Minister's incumbency. According to the Department's own statistics, the average time people spend in immigration detention is 485 days, with 20% of the detention population spending more than 730 days behind bars. Furthermore, for the 25,000 people who arrived by plane in 2018 and claimed asylum, (and were granted visa to live in the community) the Department took an average of 231 days to reach a determination. This does not bode well for refugees in the Bill's cohort whose proposed human rights protections rely solely upon speedy Ministerial intervention.

4. The passage of this Bill will close down the last avenue for resettlement for people who have been found to be genuine refugees (and hence have no ability to return home) and are, therefore, Australia's responsibility. The Government has provided no other pathway for this group. The research and data on self harm and suicide attempts by refugees in detention clearly indicates detention conditions as being the most frequent precipitants of such events. Indeed, the length of time in detention is a strong predictor of mental illness and the overwhelming majority of medical problems in this cohort relate to mental health. The passage of this Bill will result in further suicides and episodes of self-harm in the cohort. This Bill must not be passed without a viable alternative for freedom and resettlement being provided for the group.
5. The current annual cost of detention (according to the Refugee Council of Australia)
 - \$573,000 per person for offshore detention
 - \$346,000 per person for onshore detention
 - \$103,00 per person for community detentionThis compares to a person living on a visa in the community
\$10,222 per person

Surely it is obvious to all what a wicked waste of resources this Bill creates. The Memorandum suggests that the financial impact of the Bill is low. This is manifestly untrue. It is far, far cheaper to provide visas than to maintain the current detention regime.

6. There are many people in Australia who are in favour of resolving the current impasse in offshore detention by offering Community Sponsored Resettlement. Whilst this pathway is not currently available, we believe this is a solution that the Government should be working with the community to provide. This allows those Australian citizens who disagree strongly with refugees being held in detention to work towards resettling them, with minimal expense to the larger community. Canada provides a fine example of the success of this model. Individuals and community or church groups are willing and eager to provide physical, financial and emotional assistance to resettle this group. Indeed, some Christians consider it to be a mandatory expression of their religious beliefs to "welcome the stranger". The passage of this Bill would obstruct the ability for this solution to ever be implemented.
7. We have many refugees who resettled in Australia in the past and who are now noted as outstanding leaders in their field. Australia's welcoming of the Vietnamese boat people in the 1970's and 80's provides us with a template. Many of that group, having risked their life in overcrowded, unseaworthy boats in treacherous waters, have now used that courage and determination for the betterment of Australia. A large number of the cohort this Bill refers to are highly educated and skilled people. Many of them had successful businesses in their country of origin, providing employment for their compatriots. These people would be a huge asset to Australia. Changing our laws to deny them legitimate avenues to apply for Australian visa will not benefit Australia or Australians.

8. Australia has always been an open, compassionate and welcoming place. The way this cohort has been treated has been a source of shame to many Australians and diminished us on the international stage. We cannot insist other countries uphold human rights whilst we ignore the rights of those vulnerable people to whom we have a duty of care. Making this right can start with the rejection of this Bill.

In summary, the passage of this Bill would enshrine a costly political exercise that deliberately violates the human rights of refugees, vests extraordinary discretionary powers in an individual, and makes no contribution toward the stated aim of preventing further refugee arrivals by boat. We request that the Committee recommend that the Bill be rejected.