

Rural Australians for Refugees (RAR) Submission

Australian Border Force Amendment (Protected Information) Bill 2017

Background to RAR

Rural Australians for Refugees (RAR) is a network of groups of everyday people throughout regional Australia working to bring about change to the way that Australia treats refugees and people seeking asylum. Currently RAR comprises 70 groups across all states.

RAR was formed in 2001 to give people in rural communities a means for expressing their concern about the inhumane direction of government policies and practices in asylum and refugee settlement. RAR groups formed in small and large regional communities and developed activities that suited the strengths of their members and their communities. Groups work autonomously. Some groups have focussed on providing support to newly arrived refugees. Others have chosen community education and awareness programs and yet others have sought to advocate their concerns to government and the public. Many have done all three.

RAR members come from diverse backgrounds and political persuasions. RAR members maintain and represent strong connections within their own communities – with local government, service agencies schools and churches. Many also have strong connections into other groups in the refugee and human rights advocacy sector as well as with organisations providing direct help and services to refugees and asylum seekers who are in detention or needing support within the community.

A guiding value for RAR groups has been the need for accountability, transparency, fairness and compassion in the conduct of refugee policy and “good practical neighbourliness” in their own activities. RAR groups want to see an end to “blame the victim” asylum practices by the Government which treat refugees and people seeking Australia’s protection worse than convicted criminals.

General comments

Since RARs inception members have increasingly been concerned about what they perceive to be a retraction and diminution of accountability by Government in the operation of refugee and asylum policies which has been accompanied by overt resistance to transparency in their operation. Over the past 15 years members’ legitimate questions have either been ignored or been met with obstruction and/or outright obfuscation in the name of “security” or “privacy” or “client confidentiality” or “commercial-in- confidence” Members have noted that excuses about security – and the implication that people being held in detention are possible terrorists - are used in cases where full checks have been completed and where those people have been recognised as refugees. Members have noted administrative arrangements aimed at making accessibility to people being held in detention routinely and deliberately difficult.

Members have also noted an unwillingness to account to taxpayers and the Australian community and ongoing opacity in relation to their legitimate questions about the costs and about the conduct of private contractors, often presented as some security enhanced form of *extra-commercial* in confidence justification.

Members have also questioned why their legitimate questions and attempts to obtain information and access have been met with attack from Ministers and officials.

RAR wants to state for the record that it **fully supports the need for special and indeed heightened arrangements to protect Australia's security**. What it does not accept is the conflation of security with secrecy as a means for avoiding scrutiny of routine and non-sensitive operational and administrative arrangements. RAR does not accept a dilution of the standards of accountability that apply more generally to government in our democracy.

RAR members have seen the above dynamic represented in the scope and intent of the original Border Force Act. RAR members perceive that the Border Force Act is an attempt to create a body that is in some way above and beyond normal government and thus separate out the Border Force from ongoing accountability standards that the community could expect from a normal government department.

RAR welcomes the move to amend the Border Force Act to remove the elements unduly constraining democratic access. RAR is however concerned that this is a somewhat reluctant concession that is weak in its effect and does little to challenge the framing and intent of the overall legislation. RAR believes that, while the amendment may reduce some elements of overt obstructions to accountability evident in the original, it does little to specifically provide for any remedy in their breach. This lacuna leaves open the possibility of "business as usual" and continuation of a culture of secrecy and avoidance of the challenge of democratic scrutiny in the implementation of the Act.

Specific comments on the Bill

Failing the ability to rewrite the intent and objectives of the original Act, RAR members would like to see ***a stronger amendment that objectively – and specifically - supports improved capacity for external scrutiny of Border Force operations.***

RAR suggests that this could be achieved by:

- **Specific provision for an external and independent arbiter** for complaints and breaches about the onshore and offshore operations conducted by the Australian Border Force

RAR would normally expect that the Office of Commonwealth Ombudsman could fulfil this role. However, it considers that the blurred boundaries in offshore operations and the involvement of third parties (foreign governments and international organisations) suggest a purpose designed body would be more appropriate. Such a body would consider appeals on secrecy and public interest.

A Review Committee comprising representatives' familiar with administrative law, with humanitarian and international standards and obligations would be a good starting point. It should be accountable to the Parliament.

- **Removal of the special clause providing protection of commercial interests**
RAR believes that the special consideration of commercial interests is not necessary and indeed may lead to perceptions that of Border Force operations belong somehow outside of, or above, normal government commercial arrangements.
RAR believes that there is sufficient body of practice to protect commercial -in- confidence interests and that problems accountability, confidentiality and deliverables are best handled with skilled professional contractual arrangements.

A Coda

RAR is a community-based network representing the views of everyday Australians and focussed on positive support for refugees and for compassionate values. We do not have the expertise or the experience to outline in more detail what the above suggestions might look like in actual wording of amendments to the amendments.

We would however be very pleased to discuss our submission in more detail with Committee members or with the Secretariat.