



## Refugee Council of Australia

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

### **MIGRATION AMENDMENT (STRENGTHENING BIOMETRICS INTEGRITY) BILL 2015**

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, asylum seekers and the organisations and individuals who work with them, representing 200 organisations and 1,000 individual members. Established in 1981, RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, asylum seekers and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the opportunity to provide feedback to the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the *Migration Amendment (Strengthening Biometrics Integrity) Bill 2015*. This submission outlines both our general concerns relating to the potential implications of the collection of biometric information for refugee and humanitarian entrants and several specific concerns relating to the Bill under review.

#### **1. General concerns relating to collection of biometric information**

- 1.1. RCOA has a number of ongoing concerns regarding the potential implications of the collection of biometric information for refugee and humanitarian entrants. These concerns primarily relate to the particular importance of privacy for people who have fled persecution and other forms of serious harm. For these individuals, the revelation of information about their whereabouts could place not only them, but also family members and friends still living in their country of origin, at serious risk. As such, it is all the more important their personal information is collected, shared and stored with sufficient regard for confidentiality.
- 1.2. The collection of biometric information in an administrative context gives rise to significant privacy concerns. As compared to criminal law, administrative law provides fewer safeguards to regulate the collection and use of biometric information (for example, there is no system of regular judicial oversight). Furthermore, biometric information collected in an administrative context may be more easily accessible to a larger number of people than would be the case under criminal law, including individuals who have limited experience in handling sensitive personal information with due regard for privacy. Where biometric information is shared across jurisdictions, this risk is further heightened, as is the risk of this information being used for purposes beyond those stipulated in Australian legislation.
- 1.3. RCOA also has concerns relating to the length of time for which biometric information is retained in Australia (currently 80 years). We can see little justification for retaining biometric information for such a lengthy period of time, particularly if the person concerned becomes a citizen of Australia. If the purpose of collecting biometric information is to prevent identity fraud in relation to visa applications and conduct relevant checks on people seeking to travel or migrate to Australia, we fail to understand why this information must be retained well after a person has become a long-term resident or citizen of Australia, especially if there is no evidence to suggest that the person has ever posed any kind of risk. Additionally, the retention of information over such a long period further heightens the risk of privacy breaches and of information being used for a purpose very different to that for which it was originally collected.

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We also note the lack of an accessible register through which members of the public can check the status of their retained biometric information and determine whether or not it has been destroyed.

- 1.4. In addition, in circumstances where the use of biometric information leads to a person being denied a visa or having their visa cancelled, the implications for refugee and humanitarian entrants are potentially far more serious than would be the case for other non-citizens. Due to having a well-founded fear of persecution or other forms of serious harm in their country of origin, refugee and humanitarian entrants cannot be removed from Australia. As such, should their visa be refused or cancelled, they may face indefinite detention with no prospect of release in the foreseeable future. Stateless people are also at particularly high risk of prolonged indefinite detention in these circumstances due to the fact that they are not recognised as nationals by any country and therefore cannot be repatriated, even voluntarily.
- 1.5. Given the serious consequences which may stem from visa refusal or cancellation, it is imperative that the information on which such decisions are made be accurate. A recent report produced by the Science and Technology Committee of the UK House of Commons,<sup>1</sup> however, highlighted concerns that biometric systems may not always provide an accurate or dependable means of identification. The report described biometric recognition as a “probabilistic science” and noted that “the testing of biometric systems is neither regulated nor universally standardised”.
- 1.6. In RCOA’s view, the collection and use of biometric information in relation to visa and migration matters, particularly when working with refugee and humanitarian entrants, must be subject to a robust regulatory framework to ensure that privacy is maintained to the greatest extent possible. Biometric systems must also be rigorously tested and evaluated to ensure their accuracy and dependability.

### **Recommendation 1**

*RCOA recommends that the Bill be amended to introduce a robust regulatory framework for the collection and use of biometric information, including mechanisms for independent oversight.*

### **Recommendation 2**

*RCOA recommends that regulations be introduced to ensure that biometric systems are subject to rigorous and consistent testing to ensure their accuracy.*

## **2. Broadening of collection powers**

- 2.1. In light of the concerns outlined in the previous section, RCOA is troubled by the proposed introduction of broader powers to collect biometric information. The Bill would allow a greater variety of biometric information to be collected and used in a wider range of circumstances. It does not, however, appear to introduce any additional safeguards or procedures to regulate this new biometrics system. Unless the broadened powers are matched with an appropriate regulatory framework, RCOA fears that the Bill will create a higher risk of privacy breaches, misuse of information and inaccurate decision-making.
- 2.2. The risk of privacy breaches is of particular concern in light of a number of recent incidents in which sensitive personal information has been unintentionally disclosed by the Department of Immigration and Border Protection. In one of these incidents, the personal details of almost 10,000 asylum seekers who at that time were in closed or community detention in Australia were accidentally published online. More recently, the personal details of world leaders attending the G20 summit in Brisbane were inadvertently disclosed by an employee of the Department. RCOA is concerned that, in the absence of a robust regulatory framework, the Bill will increase the risk of biometric information being similarly disclosed, with potentially serious consequences for those affected.

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<sup>1</sup> See <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmsctech/734/73402.htm>

- 2.3. Additionally, while RCOA appreciates the imperative to ensure community safety, we do not believe that the need for such broad powers has been sufficiently justified. While the Explanatory Memorandum accompanying the Bill states that the Bill will “strengthen Australia’s borders and increase the integrity of the migration programme”, the link between this outcome and the proposed amendments is not clear. The Memorandum does not provide any specific examples of instances where the existing framework governing the collection and use of biometric information has hampered efforts to ensure community safety. Given the potential for this Bill to have significant negative repercussions, we believe a stronger justification for the broadened powers is essential.
- 2.4. RCOA is especially troubled by provisions of the Bill which would allow for the safeguards relating to methods for carrying out identification tests (as outlined in sections 258E and 258F of the *Migration Act 1958*) to be bypassed where an officer or the Minister authorises a different method of collection. While the Explanatory Memorandum notes that the Government intends to use these provisions to facilitate the use of fingerprint scans, the Bill itself places no limitations on the circumstances in which an officer or the Minister can authorise a different method of collection, meaning that it could be applied to significantly more invasive methods of collection.
- 2.5. RCOA cannot see how the basic safeguards in section 258E and 258F – which include a prohibition on cruel, inhuman and degrading treatment – could possibly hamper the collection of biometric information. In our view, these safeguards should apply regardless of the methods used to collect biometric information.

### **Recommendation 3**

*RCOA recommends that the Bill be amended to remove the Minister’s power to bypass the safeguards relating to the collection of biometric information set out in sections 258E and 258F of the Migration Act 1958.*

### **3. Collection of biometric information from children and incapable persons**

- 3.1. RCOA is also troubled by amendments which would permit the collection of biometric information from children and incapable persons without the consent of a parent, guardian or independent person. While we appreciate it that it may not always be possible to obtain the consent from a parent or guardian, we can see no justification for denying these highly vulnerable groups the right to have their interests considered and represented by an independent person.
- 3.2. RCOA is particularly concerned by these amendments given that people arriving under the Refugee and Humanitarian Program are highlighted in the Explanatory Memorandum as one of the three groups to which the amendments are expected to apply in practice. Given that the collection and use of biometric information can have potentially serious implications for refugee and humanitarian entrants (as noted in Section 1 of this submission), the removal of safeguards for particularly vulnerable individuals within this already vulnerable group is, in RCOA’s view, unacceptable.
- 3.3. The Explanatory Memorandum notes that these measures “are intended to be used only in limited circumstances, where intelligence or risk analysis indicates there is a particular need”. Again, however, the Bill itself places no such limitation on the use of these measures. Given the heightened vulnerability of those affected by these provisions, RCOA believes it is imperative that the presence and consent of a parent, guardian or independent person continue to be mandatory where biometric information is collected from children and incapable persons.

### **Recommendation 4**

*RCOA recommends that provisions relating to the collection of biometric information from minors and capable persons be removed from the Bill.*