

Chapter 1

Introduction

The referral

1.1 On 25 September 2014, the Minister for Immigration and Border Protection introduced the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (the Bill) into the House of Representatives.¹ On the same day and on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee (the committee) 'for inquiry and report by 27 November 2014'.²

The 'asylum legacy caseload'

1.2 As the Bills Digest explains, the 'asylum legacy caseload' refers to 'asylum seekers who arrived unauthorised by boat between August 2012 and December 2013 and who have not been transferred to offshore processing centres on Nauru or Manus Island in Papua New Guinea'.³ The Bills Digest recalls that:

In response to a significant rise in the number of unauthorised boat arrivals in 2012, an Expert Panel on Asylum Seekers was tasked by the Gillard Government to report back on policy options available 'to prevent asylum seekers risking their lives on dangerous boat journeys to Australia'. After the Panel's report was released in August 2012, the then Government announced that some, but not all, of a suite of recommendations made by the Panel would be implemented, including the reinstatement of offshore processing for selected asylum seekers and the introduction of a 'no advantage' principle which would apply to all asylum seekers who had arrived by boat. What the 'no advantage' principle meant in practice was only ever explained in very general terms as a means to ensure that 'irregular migrants gain no benefit by choosing to circumvent regular migration mechanisms'.

As more boats continued to arrive and the number of 'no advantage' asylum seekers waiting for their claims to be processed began to rise, pressure on the capacities of the onshore detention network and offshore processing centres to absorb the new arrivals increased. On 21 November 2012, the then Minister for Immigration and Citizenship, Chris Bowen, stated that 'given the number of people who had arrived by boat since 13 August 2012, it would not be possible to transfer them all to Nauru or Manus Island in the immediate future'. Instead, under the 'no advantage' principle, many would be released from detention into the community on bridging visas without work rights (BVEs) while they waited an outcome on their asylum claims.

1 House of Representatives, *Votes and Proceedings*, No. 69—25 September 2014, P. 856.

2 *Journals of the Senate*, No. 56—25 September 2014, pp. 1506-1507.

3 Bills Digest, p. 3.

Those found to be refugees would not be issued with permanent protection visas 'until such time that they would have been resettled in Australia after being processed in our region'.⁴

1.3 The 'asylum legacy caseload', therefore, consists of those asylum seekers who arrived by boat *after* the then-Government adopted the 'no advantage' principle in August 2012 but *before* December 2013, since which time all asylum seekers who have arrived by boat have been 'turned back' or sent to offshore processing under Operation Sovereign Borders.⁵ The government estimates that there are currently 30,000 people in the 'asylum legacy caseload', most of whom are not in detention.⁶

Overview of the Bill

1.4 The Explanatory Memorandum explains that the Bill 'fundamentally changes Australia's approach to managing asylum seekers', and summarises those fundamental changes as including:

- reinforcing the Government's powers and support for our officers conducting maritime operations to stop people smuggling ventures at sea, clarifying and strengthening Australia's maritime enforcement framework to provide greater clarity to the ongoing conduct of border security and maritime enforcement operations;
- introducing temporary protection for those who engage Australia's *non-refoulement* obligations and who arrived in Australia illegally;
- introducing more rapid processing and streamlined review arrangements, creating a different processing model for protection assessments which acknowledges the diverse range of claims from asylum seekers, helping to resolve protection applications more efficiently;
- deterring the making of unmeritorious protection claims as a means to delay an applicant's departure from Australia;
- supporting a more timely removal from Australia of those who do not engage Australia's protection obligations; and
- codifying in the Migration Act Australia's interpretation of its protection obligations under the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (the Refugees Convention).⁷

4 Bills Digest, p. 3. References omitted.

5 Bills Digest, p. 3.

6 Bills Digest, p. 4; Mr Morrison, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 25 September 2014, p. 10546.

7 Explanatory Memorandum, p. 2.

1.5 In his second reading speech, the Minister for Immigration and Border Protection explained that:

These measures are a necessary extension and consolidation of the government's successful border protection policies and are part of a broad package of measures which will tackle the management of the backlog of illegal maritime arrivals...and bring important enhancements to the integrity of Australia's protection regime.

The government is committed to Australia's national security and economic prosperity in its efforts to combat the illegal and dangerous practice of people-smuggling. These changes will further strengthen the government's ability to manage illegal arrivals and strengthen public confidence in Australia's protection and migration programs.⁸

1.6 The Bill would—if passed—amend:

- the *Administrative Decisions (Judicial Review Act) 1977*;
- the *Immigration (Guardianship of Children) Act 1946*;
- the *Maritime Powers Act 2013*;
- the *Migration Act 1958*; and
- the Migration Regulations 1994.

1.7 Each of the elements to the Bill will be explored in the next chapter.

1.8 The Explanatory Memorandum describes the financial impact of the Bill as 'medium'.⁹ It further notes that '[a]ny costs will be met from within existing resources of the Department of Immigration and Border Protection'.¹⁰

Other parliamentary inquiries

1.9 The Senate Standing Committee for the Scrutiny of Bills examined the Bill in *Alert Digest No. 14 of 2014*. It noted 27 concerns that fall within its terms of reference.¹¹

1.10 The Parliamentary Joint Committee on Human Rights examined the Bill in its *Fourteenth Report of the 44th Parliament*. It considered that two elements of the Bill are not compatible with human rights and raised concerns about eleven other elements.¹²

8 Mr Morrison, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 25 September 2014, pp. 10545-10546.

9 Explanatory Memorandum, p. 13.

10 Explanatory Memorandum, p. 13.

11 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 14 of 2014*, 29 October 2014, pp. 20-47.

12 Parliamentary Joint Committee on Human Rights, *Fourteenth Report of the 44th Parliament*, October 2014, pp. 70-92.

Conduct of the inquiry

1.11 The committee advertised the inquiry on its website (www.aph.gov.au/senate_legcon) and wrote to a number of stakeholders inviting submissions. The committee set a deadline for submissions of 31 October 2014.

1.12 The committee received more than 5,500 submissions. Due to the volume of submissions, the committee decided not to publish certain campaign letters. The remaining submissions were published on the committee's website. A list of published submissions is at Appendix 1.

1.13 A public hearing was held on 14 November 2014. A list of witnesses who appeared is at Appendix 2. The *Hansard* transcript of the committee's hearing can be accessed on the committee's website.

Acknowledgment

1.14 The committee acknowledges those who participated in the inquiry and thanks them for their assistance. The committee is particularly grateful to witnesses who appeared at the public hearing at relatively short notice.

Note on references

1.15 References in the report to the committee *Hansard* are to the proof committee *Hansard*. Page numbers between the proof committee *Hansard* and the official *Hansard* may differ.

Structure of the report

1.16 This report has been divided into three chapters. Chapter 2 summarises the key changes brought about by the Act and Chapter 3 canvasses the submissions received and contains the committee's recommendations.