

Dissenting Report

Senator Sarah Hanson-Young

Migration Legislation Amendment Bill (No. 1) 2014

[Provisions]

Introduction

The Migration Legislation Amendment Bill (No.1) 2014 [Provisions] seeks to further limit the protection avenues available to refugees seeking Australia's assistance by overturning a number of High Court decisions and implementing punitive measures that will put vulnerable people at potential risk.

The amendments proposed by this bill will have significant implications on people seeking to engage Australia's protection obligations. The Bill, amongst other things, seeks to prevent individuals with genuine claims from lodging further protection visa applications, limits a migration assistant's ability to act on behalf of their client and increases the likelihood of Australia breaching its non-refoulement obligations.

The majority of submissions received and evidence heard by the committee on this Bill were not supportive of the proposed changes and concluded that the Bill should not proceed in its current form.

The Australian Greens do not support the Bill as it is just another step by the government to limit the protection avenues for refugees who are in genuine need of protection. This report highlights the areas of serious concerns as raised by witnesses and submitters to inquiry.

Schedule 1: Application for further visas

The amendments proposed in Schedule 1 of the Bill seek to prohibit asylum seekers from applying for a protection visa if a previous application has been made. The amendments specifically stipulate that regardless of whether the person knew about, or understood the nature of the application, because they were a minor or due to a mental impairment, they will be prevented from making a further application for protection.

The Refugee Council of Australia (RCOA) stated in their evidence to the committee that:

A process which denies this opportunity to particularly vulnerable groups of asylum seekers due to factors entirely beyond their control can hardly be described as procedurally fair.¹

This amendment puts vulnerable people, in particular minors and the mentally impaired, who were unaware that an application had been made on their behalf or who were unable to understand the visa application process, in grave danger of being returned to persecution.

Australia has obligations under the Refugee Convention and international law to not return people to places where that would be at risk of significant harm. These obligations cannot simply be dismissed because the government of the day thinks it is administratively burdensome to process people's claims for protection fairly.

As stated by the Human Rights Law Centre, 'the proposed reform prioritises administrative convenience over a correct decision where protection from serious harm may be at stake'.² 'Where fundamental rights are at stake, the overriding concerns must be to ensure that no individual is returned to a risk of serious harm'.³

Further to this, the Australian Greens are extremely concerned about the impact that these amendments will have on vulnerable children and young people. The government as a signatory to Convention on the Rights of the Child is required at all times to act in the best interest of the child. Despite this, the government expressly states that the proposed amendment is 'one such measure where the preservation of the integrity of Australia's migration program outweighs the best interests of the child'.⁴ It is never acceptable to act against the best interest of the child, particularly to appease public opinion. Similar concerns have been raised by submitters to the inquiry including Salvos Legal⁵ and RCOA.⁶

Schedule 2: Removal of people on bridging visas

The amendments proposed in Schedule 2 of the Bill seek to overturn a decision of the High Court to make it possible for the government to remove unlawful non-citizens when they have a bridging visa application afoot.

The committee heard from a number of submitters and witnesses stating that the amendments do not provide sufficient safeguards and could potentially lead to Australia breaching its non-refoulement obligations.

1 Refugee Council of Australia, *Submission 5*, p. 1.

2 Human Rights Law Centre, *Submission 4*, p. 4.

3 Human Rights Law Centre, *Submission 4*, p. 3.

4 Migration Legislation Amendment Bill 2014 [Provisions], *Explanatory Memorandum*, Attachment A, Statement of Compatibility, p. 12.

5 Salvos Legal, *Submission 3*, p. 2.

6 Refugee Council of Australia, *Submission 5*, p. 2.

Salvos Legal submitted that:

Removal may adversely impact on unlawful noncitizens who have made a bridging visa application with the intention of lodging a subsequent visa application, or who are in the process of preparing a request for Ministerial Intervention (including if on grounds never previously raised).⁷

The Refugee Advice and Casework Service clearly outlined to the committee that we must have a proper process in place to ensure that no individual is returned to a place where they are significant risk of harm and that there must be appropriate safeguards in place to ensure that those processes are being followed properly. As stated by Ms Katie Wrigley, 'streaming removal to prevent consideration for a bridging visa currently on foot will remove one of these safeguards'.⁸

Similarly, RCOA has stated the government's pre-removal clearance procedure did not provide sufficient safeguards against refoulement:

This procedure does not allow for a thorough assessment of protection claims, nor is it subject to the same forms of independent review as a visa determination process. As such, it cannot provide a substitute for a robust, statutory refugee status determination process.⁹

The amendments proposed in Schedule 2 of the Bill create instances where vulnerable asylum seekers will be put at further risk if forcibly removed.

Schedule 4: Authorised recipients

Amendments proposed in Schedule 4 of the Bill seek to change the role of the authorised recipient who has been appointed to act and receive documentation on behalf of the visa applicant.

Organisations providing asylum seekers and refugees with legal advice and assistance have raised significant concern about the implications of these proposed amendments. The Refugee Advice and Casework Service told the inquiry that:

Changing the law essentially reduces the role of the recipient to be no more than a person who receives documents. The proposed amendment removes the current, rational, position that a client applicant is free to instruct an agent and tell that agent what the agent is empowered to do. It reduces the migration agent to an address.¹⁰

The Australian Greens believe that the proposed amendments will limit an agent's ability to act on behalf of their client and provide them with the necessary assistance

7 Salvos Legal, *Submission 3*, p. 2.

8 Ms Katie Wrigley, Principal Solicitor, Refugee Advice and Casework Service, *Committee Hansard*, 28 July 2014, p. 4.

9 Refugee Council of Australia, *Submission 5*, p. 2.

10 Refugee Advice and Casework Service, *Submission 1*, p. 8.

they require. Any attempt by the government to dilute an individual's right to access to proper legal representation is punitive and breaches our obligations to those seeking protection.

Schedule 5: Use of material obtained under a search warrant

Schedule 5 of the Bill if passed would enable administrative decision makers to use materials and information obtained by a search warrant in the determination of an individual's visa and citizenship application.

Significant concerns were raised by RCOA in their submission about the intention of this amendment. RCOA advised the committee that the information would be 'used for purposes which extend well beyond preventing, investigating or prosecuting a criminal offence'¹¹ as intended under the *Crimes Act 1914*.

Further to this, RCOA raised concerns about the implications of this amendment stating that it could put asylum seekers and refugees at significant risk owing to the confidential nature of a person's case that is fleeing persecution.¹²

Conclusion

The Migration Legislation Amendment Bill (No.1) 2014 [Provisions] seeks to further limit the protection avenues available to refugees seeking Australia's assistance by overturning a number of High Court decisions and implementing punitive measures that will put vulnerable people at potential risk.

The Australian Greens depart from the recommendation of the majority report and conclude that the Bill should not proceed on basis of the arguments outlined above.

Recommendation 1

1.1 The Australian Greens recommend that this bill not proceed.

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Australian Greens

11 Refugee Council of Australia, *Submission 5*, p. 4.

12 Refugee Council of Australia, *Submission 5*, p. 4.