

# Chapter 1

## Introduction

### Referral

1.1 The Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 (the bill) was introduced into the House of Representatives on 8 November 2016 by the Minister for Immigration and Border Protection, the Hon Peter Dutton MP.<sup>1</sup> On 10 November 2016, the Senate referred the bill to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report by 22 November 2016.<sup>2</sup>

1.2 The Senate Selection of Bills Committee recommended that the bill be referred to examine the '[i]mpact on families and children [and] compliance with Australia's International Human Rights obligations'.<sup>3</sup>

### Conduct of inquiry

1.3 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to organisations inviting written submissions by 14 November 2016. The committee received 84 submissions, listed at Appendix 1. The committee held a public hearing in Melbourne on 15 November 2016. Details of the public hearing are provided at Appendix 2. Questions on notice and other material received by the committee are listed at Appendix 3. The committee thanks the Department of Immigration and Border Protection and the other organisations and individuals that assisted with the inquiry.

### Overview of the bill

1.4 The bill, if passed, would amend the *Migration Act 1958* (Migration Act) and the Migration Regulations 1994 (Migration Regulations) to indefinitely preclude 'unauthorised maritime arrivals' (UMAs) from making a valid application for any Australian visa. Item 1 of the bill inserts a proposed new definition in subsection 5(1) of the Migration Act. This classifies specific persons as part of a 'regional processing cohort'. This includes individuals who were at least 18 years old and are transferred to a regional processing country after 19 July 2013, including those who:

- are currently in a regional processing country;
- have left a regional processing country and are in another country;
- are in Australia awaiting transfer back to a regional processing country and who are taken to a regional processing country in the future;<sup>4</sup> and,

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1 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 8 November 2016, p. 1.

2 Journals of the Senate, *No. 15 2016*, p. 448.

3 Senate Selection of Bills Committee, *Report No. 8 of 2016*, 10 November 2016, Appendix 6.

- people temporarily transferred from regional processing countries to Australia for medical treatment and those who have since settled in another country or returned home and applies to both temporary and permanent visas.<sup>5</sup>

1.5 The bill confers a power on the Minister to permit a member of the designated regional processing cohort, or a class of persons within the designated regional processing cohort, to make a valid application for a visa if the Minister considers it is in the public interest to do so.

1.6 The bill also includes measures to prevent a member of the designated regional processing cohort from being deemed to have been granted a special purpose visa under section 33 of the Migration Act, or being deemed to have applied for particular visas under the Migration Regulations.

1.7 The Explanatory Memorandum describes the bill as introducing a 'statutory bar' preventing certain non-citizens who were taken to a regional processing country from making a valid application for a visa to come to or remain in Australia. The Minister's power to permit a member of a regional processing cohort to make a valid visa application where it is in the public interest is referred to as 'lifting the bar' in the Explanatory Memorandum.<sup>6</sup>

### **Purpose and background**

1.8 The stated purpose of the bill is:

...to prevent unauthorised maritime arrivals (UMAs) who were at least 18 years of age and were taken to a regional processing country after 19 July 2013 from making a valid application for an Australian visa.<sup>7</sup>

1.9 The Minister for Immigration and Border Protection, the Hon Peter Dutton MP, described the policy background to the bill in the second reading speech:

The government's reform of our border protection policies has sent the message to people smugglers that they cannot offer a path to Australia. Life in Australia is not an illicit commodity to be sold to the desperate and vulnerable at a great profit.<sup>8</sup>

1.10 The Minister has stated that the purpose of the bill is to 'reinforce the government's longstanding policy that people who travel here illegally by boat will never be settled in this country'.<sup>9</sup>

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4 Migration Legislation Amendment (Regional Processing Cohort) Bill 2016, Explanatory Memorandum (EM), p. 2.

5 EM, p. 2.

6 EM, *Attachment A*, p. 23.

7 EM, p. 2.

8 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 8 November 2016, p. 1.

9 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 8 November 2016, p. 1.

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1.11 The measures in the bill were first announced on 19 July 2013. The Department of Immigration and Border Protection confirmed in evidence to the committee that

Mr Rudd said, that after that date, 19 July 2013—it being significant insofar as it was the date that he and Mr O'Neill, the Prime Minister of Papua New Guinea, signed an agreement pertaining to Manus—persons who were transferred to Manus or Nauru would 'never settle' in Australia.<sup>10</sup>

### **Inquiry timeframe**

1.12 The committee notes the short timeframe for reporting on the bill, and appreciates the assistance of submitters and witnesses who provided evidence and made themselves available at the public hearing.

### **Structure of this report**

1.13 There are two chapters in this report.

1.14 Chapter 1 outlines the context and background to the inquiry.

1.15 Chapter 2 discusses the key issues raised in submissions and at the public hearing, and provides the committee's recommendation.

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10 Mr Michael Pezzullo, Secretary, DIBP, *Committee Hansard*, 15 November 2016, p. 30.

