

# **Labor Party Senators' Dissenting Report**

1.1 The Australian Labor Party (Labor Party) dissents from the majority report of the Legal and Constitutional Affairs Legislation Committee (the committee) inquiry into the provisions of the Migration (Validation of Port) Bill 2017 (the bill).

1.2 Labor Senators recognize that the Appointment, which was gazetted in 2002 by the then Liberal Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Phillip Ruddock MP, was designed to ensure that maritime arrivals who entered certain waters of the territory of Ashmore and Cartier Islands, an 'excised offshore place' for the purposes of the Migration Act, would become 'offshore entry persons', now referred to as 'unauthorised maritime arrivals' (UMAs).

1.3 The Labor Party notes that this is another case of the poor drafting of legislation and associated instruments in matters relation to immigration matters and that this has occurred under successive Coalition Governments. The regular broad, poorly drafted, and erroneous legislation often has unintended consequences.

1.4 Labor Senators are strongly of the view that the Minister for Home Affairs and the Department of Home Affairs have failed to clearly articulate and outline the need for this legislation in its current form.

1.5 Despite numerous requests from Labor Senators, the Minister for Home Affairs and the Department of Home Affairs were unable to advise the number of persons affected by the invalid appointment, or how many affected persons remain in immigration detention or various stages of processing. It is hard to believe that the Department of Home Affairs is unable to definitively outline the number of individuals affected by this bill.

1.6 No submitters were able to provide an exact figure. However, submitters, including the Department, suggested that 1600 individuals would be affected by the bill. It should be noted that the department also suggested that the estimate could be between 1600 and 1800 individuals.

1.7 The Minister for Home Affairs and his Department have also failed to inform the persons affected that their immigration status and legal rights have been impacted by the invalid appointment. Instead, the Government has sought to pass the bill as swiftly as possible so that persons affected do not have time to exercise their rights before they are retrospectively stripped by the enactment of the bill.

1.8 In evidence to the inquiry, the Department admitted that:

- the essential effect of the bill was to remove the rights, of those affected by the bill, to:
  - seek a full merits review of their application for protection, by the AAT;
  - and
  - apply for a permanent, as opposed to temporary, protection visa.

1.9 The bill has no impact positively or negatively on the ongoing and future operation of 'Operation Sovereign Borders.' In fact, Labor Senators note that Departmental officials stated

it would be ‘false’ for any person to claim that the failure of the bill to pass the parliament would impede the Government’s capacity to carry out its activities under Operation Sovereign Borders.

1.10 Many submitters expressed valid concerns that the bill would unfairly remove the legal rights of various categories of people, including:

- people who have current matters before the court or relevant tribunals. Labor Senators are concerned that there may be a number of cases whereby a person has been refused by the IAA and appealed to Court, however they have not received a judgment from the court;
- people who are still having their applications for protection determined by the Department, and, because of that, have not commenced any judicial review proceedings;
- people who have been refused by the department but are subject to current unfinalised merits review by the IAA and, because of that, have not commenced any judicial review proceedings;
- people who have gone through the entire judicial review process, before the Federal Court and Federal Circuit Court identified issues with the Appointment.

1.11 The Labor Party opposes Temporary Protection Visas and believes those that are eligible for protection should be offered protection as permanent residents. In addition, the Labor Party opposes the Fast Track process, due to its denial of natural justice, and is concerned the Minister for Home Affairs and his Department are seeking to push people back into a Fast Track process.

### **Recommendation 1**

**Labor Senators recommend that anyone who is affected by this bill, in a manner set out in paragraph 1.10 above, should be protected in the transitional provisions of the Bill and allowed to exercise their rights without interference from this bill.**

### **Recommendation 2**

**Labor Senators recommend that any amendment should allow for a further period of time in which people can pursue their claim for protection.**

### **Recommendation 3**

**Labor Senators recommend that the Minister for Home Affairs and his Department urgently contact all affected individuals.**

**Senator Louise Pratt**

**Deputy Chair**