



New South Wales
Council for Civil Liberties

NSWCCL SUBMISSION

REVIEW OF

**MIGRATION LEGISLATION
AMENDMENT (REGIONAL
PROCESSING COHORT) BILL 2016**

**SENATE LEGAL AND
CONSTITUTIONAL AFFAIRS
LEGISLATION COMMITTEE**

14 November 2016

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts; attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

Contact NSW Council for Civil Liberties

<http://www.nswccl.org.au>

office@nswccl.org.au

Street address: Suite 203, 105 Pitt St, Sydney, NSW 2000, Australia

Correspondence to: PO Box A1386, Sydney South, NSW 1235

The New South Wales Council for Civil Liberties welcomes the opportunity to provide our views to the Senate Legal and Constitutional Affairs Legislation Committee's review of the Migration Legislation Amendment (Regional Processing Cohort) Bill 2016.

The NSW Council for Civil Liberties opposes this Bill in its entirety.

This Bill seeks to ensure that no-one who was over 18 when taken to a regional processing country and was an unauthorised maritime arrival will be able to apply for a visa to enter Australia. The Bill should not be passed for the following reasons:

1. It is not necessary

The Bill provides a blanket prohibition on certain persons subject to offshore processing from obtaining a visa to enter Australia. There are already many grounds on which a visa can be refused: if a person cannot meet character requirements or if there is some sham or illegitimate reason for applying for a visa. No suggestion has been made by the Government that the current grounds to refuse a visa are inadequate.

This amendment applies only to a limited cohort of people and for reasons which are not clear. It does not appear to be a condition of the recently announced deal to settle people currently in offshore detention centres in other countries. It is not necessary for stopping boats from arriving, since no boats have arrived for a considerable period of time due to other policy measures. In the absence of a good reason to enact this legislation, we cannot support it passing the Senate.

2. It is contrary to international human rights obligations

The Bill is inconsistent with Australia's obligations under international law. As signatory to the Refugee Convention, Australia is obliged to give protection to refugees. Australia has effectively disclaimed this obligation by removing asylum seekers to offshore processing.

This Bill further abrogates this obligation by providing that in certain circumstances genuine refugees may never receive a visa to enter Australia. The Bill is contrary to Article 31 of the Refugee Convention, which prohibits penalising people seeking asylum for their mode of entry. Genuine refugees who have sought to enter Australia by boat will be subject to a penalty of a lifetime ban.

The Bill is also contrary to Australia's international human rights obligations to protect families and children by ensuring family units remain intact. There have been many media stories regarding families that have been separated, with some close family members in offshore detention centres and some in Australia. A lifetime ban on visa applications by parents subject to this Bill would ensure these families remain separated.

3. It is contrary to the rule of law

The Bill is retrospective in its effect since it applies from enactment to a group of people who fulfilled a requirement in the past.

The Bill does provide that the Minister has discretion to accept a visa application which would be otherwise prohibited. However, this further extends the grounds upon which Ministerial discretion may apply; a most unwelcome legislative trend over recent years. Fundamental rights should not be subject to discretionary determinations, which do not meet requirements of natural justice.

4. Process Issue

We also have issues as to process. The Bill was introduced in extreme haste. We welcome the review by the Senate Committee, but note that the extremely short time frame does not permit voluntary organisations such as NSW Council for Civil Liberties a reasonable time for consideration of the Bill and its implications. This extremely short time frame does not auger well for the adequate review of legislation.

Recommendation

The NSW Council for Civil Liberties opposes this Bill and recommends it is not passed.

This submission was prepared by Therese Cochrane on behalf of the NSW Council for Civil Liberties. We hope it is of assistance to the Senate Legal and Constitutional Affairs Legislation Committee.

Yours sincerely,

Therese Cochrane
Secretary
NSW Council for Civil Liberties
Mobile 0402 013 303
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