



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Representation in Canberra

14 Kendall Lane
Canberra ACT 2601
Australia

Tel.: +61 2 6281 9100
Email: aulca@unhcr.org

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

11 April 2023

Subject: Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Bill 2023 and Migration (Visa Pre-application Process) Charge Bill 2023

The Office of the United Nations High Commissioner for Refugees welcomes the opportunity to provide this letter to the Senate Legal and Constitutional Affairs Legislation Committee, in respect of its inquiry into the Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Bill 2023 (the Bill) and the Migration (Visa Pre-application Process) Charge Bill 2023 (the Charge Bill).

As set forth in the *Statute of the Office of the United Nations High Commissioner for Refugees*, UNHCR fulfils its international protection mandate by, *inter alia*, '[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto'.¹ UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the *1951 Convention relating to the Status of Refugees*,² according to which State Parties undertake to "co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention." The same commitment is included in Article II of the *1967 Protocol relating to the Status of Refugees* (1967 Protocol).³

The Explanatory Memorandum notes that the primary purpose of the Bill and the Charge Bill is to establish a framework for the creation of a new visa, the Pacific Engagement

¹ Statute, para. 8(a).

² UN General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

³ UN General Assembly, *Protocol relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267.

Visa (PEV).⁴ The Bill would amend the *Migration Act 1958 (Cth)* (Migration Act) to introduce a legislative power for the Minister to implement a visa pre-application process (also referred to as a ballot in the Explanatory Memorandum), involving the random selection of eligible persons who would then be permitted to apply for a relevant visa.⁵ The Charge Bill would impose a charge on persons who register to participate in a visa pre-application process.⁶ This letter addresses the amendments in the Bill that are capable of affecting refugees, asylum-seekers, and stateless persons, in light of relevant international legal obligations.

The Explanatory Memorandum notes that the Bill provides a framework for the ballot process to be used in relation to other visas subject to decisions by the government of the day and will also be subject to parliamentary oversight.⁷

UNHCR recommends that statutory safeguards be introduced in the Bill to expressly exclude the application of the ballot to visas that respond to Australia's international refugee and human rights obligations to those seeking protection. This would include refugee and humanitarian visas and especially where the right to family unity exists.

While UNHCR acknowledges the Government's prerogative to develop program management tools that allow it to manage its migration program, in this context UNHCR reiterates its previously expressed concerns regarding the inappropriate application of the visa capping provisions under section 85 of the Migration Act to the refugee context. It is UNHCR's view that as soon as an individual is recognized as a refugee, they should be entitled to a visa regularizing their stay, which allows the individual to access all the rights to which they are entitled under the 1951 Convention.

For the reasons stated above, it is recommended that amendments are made to safeguard against any further erosion of Australia's ability to fully implement its international obligations in good faith.

Yours sincerely,
Adrian Edwards

Representative
UNHCR Regional Representation Canberra

⁴ Migration Amendment (Australia's Engagement in the Pacific and other measures) Bill 2023 Migration (Visa pre-application process) Charge Bill, Explanatory Memorandum p.2, available at:

https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6977_ems_32bce521-e17d-4b68-a671-46c7d5e25c96/upload_pdf/JC008844.pdf;fileType=application%2Fpdf.

⁵ Ibid.

⁶ Ibid, p.4.

⁷ Ibid, p.3.