



Australian Government
Department of Immigration and Border Protection

SECRETARY

31 August 2014

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

Dear Committee Secretary

**Submission to the Senate Legal and Constitutional Affairs Legislation Committee
Inquiry into the Migration Amendment (Protecting Babies Born in Australia) Bill 2014**

Thank you for the opportunity to provide comment to the Senate Legal and Constitutional Affairs Committee for the inquiry into the Migration Amendment (Protecting Babies Born in Australia) Bill 2014.

This Bill seeks to exclude persons born in the migration zone from the definition of an *unauthorised maritime arrival* (UMA) in section 5AA of the *Migration Act 1958* (the Act).

Currently, the Act provides that all UMAs who are unlawful non-citizens and in Australia are unable to make a valid application for a visa, unless the Minister allows this (section 46A refers) and that, subject to certain qualifications, all UMAs who are detained are subject to offshore processing (section 198AD refers). These provisions, together with the inclusion of the children of UMAs who are born in the migration zone within the definition of UMA, are used to implement the Government's offshore processing and offshore resettlement policies.

The Government's position, that the children of UMAs who are born in the migration zone are included within the definition of UMA in the Act, is currently in dispute in the Federal Circuit Court of Australia in the matter known as *Plaintiff B9/2014*. The final hearing in these proceedings has been listed for 14 October 2014 and the department has provided several undertakings to lawyers representing children of UMAs born in Australia not to transfer the children to a regional processing country until these proceedings are determined.

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If this Bill were to be enacted, it would result in UMAs being subject to offshore processing whose children are exempt from offshore processing, requiring inconsistent treatment of members of the same family unit and therefore separation of the family unit.

In summary, this Bill directly contradicts current Government policy.

Yours sincerely

Martin Bowles PSM