



AUSTRALIAN  
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**Dear MP**

### **Migration Legislation Amendment (Regional Processing Cohort) Bill 2016**

We are the co-chairs of the Refugee Rights Subcommittee of the Australian Lawyers for Human Rights (ALHR). ALHR is a leading national human rights organisation established in 1993 and is a network of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and a secretariat at La Trobe University Law School in Melbourne.

As you will be aware, on 10 November the *Regional Processing Cohort Bill 2016* passed the House of Representatives. The Bill is currently before the Senate and has been referred to the Senate Committee on Legal and Constitutional Affairs, which is due to report on 22 November, 2016.

We write to urge you to vote against this proposed legislation. Your vote will be crucial in ensuring that this punitive, inhumane and unnecessary legislation never sees the light of day.

Under the proposed legislation, persons who arrived in Australia by boat on or after 19 July 2013 and who were over 18 years old at the time they were taken to Nauru or Manus Island, will not be permitted to make a valid visa application to enter Australia – ever. They will not, even if they have been resettled to a third country and have acquired permanent residence or citizenship of that country, be permitted to enter Australia. Legally, the proposed legislation breaches Australia's international obligations. Socially, it undermines the

principles of family unity, cohesion and multiculturalism that are fundamental to Australia's identity.

As you would be aware, Australia is a signatory to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol. As such, we have undertaken to provide protection for those who seek asylum in Australia and who are found to be refugees. Article 31 of the Refugee Convention prohibits states from imposing a 'penalty' on asylum seekers who come directly to its territory "illegally" (i.e. by boat) provided that they 'present themselves without delay to the authorities and show good cause for their illegal entry'. This proposed legislation does exactly that: it penalises those who arrive by boat by preventing them from ever entering Australia. It would create different classes of refugees by discriminating between those who come by boat and those who arrive by plane.

The lifetime ban on refugees has the potential to tear families apart. Many of the recognised refugees on Manus Island and Nauru already have family residing in Australia. Denying these refugees their right to family reunification breaches Australia's obligations under the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It will cause further mental anguish for those on Manus and Nauru. We find it difficult to reconcile the government's move to facilitate family reunification (through a new temporary parent visa for Australian citizens and permanent residents) with these measures, which seek to deprive refugees of the very same opportunities. If it is recognised that the family is a fundamental unit of society, the right to family reunification must be available to all, without discrimination.

The proposed lifetime ban for refugees is a radical departure from the current law and policy. Existing migration law provides that a person who has had their visa cancelled in Australia on character grounds, and has been removed from Australia, will be permanently excluded from re-entering Australia. We note that there can be some good public policy justifications in these cases, such as where this is necessary to protect public safety. By contrast, the refugees to whom the proposed legislation applies have not committed any crime. It is not a crime to seek asylum under international law. The proposed legislation unfairly categorises genuine refugees as 'criminals', when this is clearly not the case with every refugee and little evidence that this is the case even for a minority. On the contrary, refugees have made and continue to make a significant contribution to Australia's economic, social and cultural wellbeing.

The Bill contains provisions to allow the Minister to 'lift the bar' and allow a refugee to make a valid application for a visa, where the Minister considers that it is in the public interest. According to the Statement of Compatibility with Human Rights that accompanies the Bill, the discretionary power to lift the bar affords flexibility 'in circumstances involving Australia's human rights obligations towards families and children'. With respect, this is woefully inadequate. Given the government's consistent and strong statement of its policy that no person arriving by boat will ever be resettled to Australia, it is difficult to trust that the Minister would exercise this discretionary power in a sensible manner that is consistent with Australia's international obligations.

The Turnbull government has argued that this legislation is necessary to send a strong message to people smugglers and to prevent people from undertaking dangerous boat journeys. If it is serious, the government must recognise that people undertake such journeys because of a lack of effective protection within our region and a lack of legal pathways to enter Australia. A sustainable and effective refugee policy must involve Australia working in cooperation with other countries in the region and must be premised on upholding the rights of refugees under the Refugee Convention. Punishing refugees in this manner is not the answer.

ALHR would be happy to further brief you on any aspect of this Bill. We can be contacted either at: [refugees@alhr.org.au](mailto:refugees@alhr.org.au) or on the following phone numbers 0422 401 867 (Khanh Hoang) or 0476 271 853 (Rebecca Dowd).

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