



## **Submission to the Legal and Constitutional Affairs References Committee Inquiry into nationhood, national identity and democracy September 2019**

Combined Refugee Action Group welcomes the opportunity to provide a submission to this inquiry and thanks the Committee for extending an invitation for us to do so.

Combined Refugee Action Group is based in Geelong, Victoria. We are a network for over 700 individuals and community groups across the Geelong, Bellarine Peninsula and Surf Coast region, all working for people seeking asylum to be treated with fairness and decency. Our members are in regular contact with people who have come to Australia to seek asylum and who are now part of the social fabric of our region. Our submission, therefore, explores the issues of nationhood, national identity, citizenship and democracy with a particular focus on Australia as a multicultural, welcoming nation where people can be provided with a safe place to rebuild their lives and find belonging. In this light, we offer comment on the following elements of the Terms of Reference:

### **SECTION 1**

#### **The changing notions of nationhood, citizenship and modern notions of the nation state in the twenty first century**

##### **Social cohesion and cultural identity in the nation state**

##### **Comparison between Australian public debate and policy and international trends**

The discussion paper provided raises issues about political ideologies that were once considered fringe, now commanding substantial support. It mentions the idea of 'post truth' politics based on emotion instead of evidence, and the counter perspective of inhibiting free speech further contributing to division in the community.

Nationalist movements which emphasise sovereignty and preservation of national identity, and often more extreme anti-immigrant and white supremacist ideals, are given validation by political rhetoric regarding refugees and people seeking asylum. Terms frequently spoken by our nation's political leaders, such as "illegals", "queue-jumpers", "job-stealers", and "economic refugees" are not only erroneous but divisive. We believe that these terms are often chosen deliberately by certain politicians to create animosity and blame toward refugees and people seeking asylum, as a political strategy to win power by securing votes for 'tough borders' from people who feel disenfranchised due to unemployment and difficult economic circumstances. Internationally, we have seen this same phenomenon occur with Brexit in England and USA President Donald Trump's border policies.

Similarly, the political promotion of concepts such as "protecting our way of life" have led people to believe that Australian liberty, democracy and safety are somehow under threat by refugees and migrants. Various federal political leaders have made statements about Australia 'being swamped by Asians/Muslims/refugees', 'taken over by Sharia Law' and being infiltrated by 'terrorists', 'thugs', 'paedophiles', 'murderers' and 'rapists' in relation to migrants and refugees who wish to call Australia home. These statements have created fear, division and hatred in our communities. These statements, along with some politicians associating with individuals and groups with white supremacist and anti-Muslim ideology, have given licence to people to engage in hate speech and acts of vandalism, violence and terrorism against groups of 'others' they perceive as a threat.

In our city of Geelong, which since 1983 has hosted Australia's largest regional multicultural festival, three Muslim children were assaulted by a gang of youths, as they played in a playground in 2016. Their headdresses were torn from them and they were punched, stoned

and robbed. This was encouraged by at least one adult who was present. "They hit us and their mum was saying rude words to us; 'go back to your country, go back to your country.", one of the children was quoted as stating after the attack.<sup>1</sup>

In other examples:

- A young Muslim mother told members of Combined Refugee Action Group how terrified she was when a group of young adult men surrounded her car, as she waited at traffic lights in central Geelong, and yelled obscenities at her and her child in reference to their race and religion.
- A group of Sudanese Australian youth, performing dances at a local community festival, explained that they no longer felt safe to enjoy Geelong's waterfront together with their friends after being falsely labelled as a criminal gang and fearing that they would be set upon by other groups in the community.

Along with the use of deliberately misleading language, misinformation has been regularly provided in political media interviews and public statements about refugees and people seeking asylum. This further dissolves community cohesion, undermines public trust and creates animosity. Some examples of this are:

- Then Immigration Minister Scott Morrison erroneously stated, in a media conference, that detainees had put themselves at risk after pushing fences down to escape the processing centre compound on Manus Island in 2014. In fact, the murder of Reza Barati and the injury of some 70 other people seeking asylum occurred *inside* the compound, at the hands of people who were paid to protect them.<sup>2</sup>
- Home Affairs Minister Peter Dutton suggested that a five year old boy was 'lured' into the detention centre by detainees on Manus Island for possible sexual abuse. However, asylum seekers and the PNG police advised that the boy was ten years old and begging for food outside the centre, that he had been taken inside the centre gate (with the approval of security staff), asked to wait outside the accommodation areas while fruit was gathered for him, and that he had then left unharmed.<sup>3</sup>
- Prime Minister Scott Morrison stated that Medevac laws would mean that paedophiles, rapists and murderers would have to be allowed into Australia. This is despite the legislation allowing for transfer refusals on security grounds, but no medical transfers actually being refused on security grounds to this point.<sup>4</sup>
- Home Affairs Minister Peter Dutton stated on a 2GB radio interview that Tamil man, Nades, had travelled from Australia while his matter was still before the courts, and then went on to say that Nades had travelled to Qatar, Kuwait and back to Sri Lanka. However, this was incorrect. The truth is that Nades travelled to Qatar and Kuwait, returning to Sri Lanka, *long before* he sought asylum in Australia. His visas class has made travelling outside Australia and returning impossible, which Mr Dutton knows.<sup>5</sup>

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<sup>1</sup> News report in The Age: <https://www.theage.com.au/national/victoria/girls-vilified-by-gang-of-youths-in-norlane-racist-attack-20160330-gntp3e.html>

<sup>2</sup> Article from ABC: <https://www.abc.net.au/news/2015-03-30/steketee-scott-morrison/6357930>

<sup>3</sup> ABC news reports: <https://www.abc.net.au/news/2017-04-21/no-link-between-manus-detention-centre-attack-and-sex-crime/8460948>  
<https://www.abc.net.au/news/2017-04-28/manus-island-detainee-who-brought-boy-to-detention-centre-speaks/8478020>

<sup>4</sup> News report in The Courier: <https://www.thecourier.com.au/story/5889562/pm-fans-fears-about-rapists-and-murderers/>

<sup>5</sup> Canberra Times fact check article: <https://www.canberratimes.com.au/story/6383176/dutton-wrong-on-tamil-dads-travel/>

Public misconceptions and fears regarding 'others' have been further reinforced by the restructure and renaming of government departments to align refugees with border protection and national security, rather than with immigration and citizenship.

In contrast, political statements, messaging and advertisements in Australia in the 1980s and 1990s focused on Australia as a thriving multicultural society where people from all cultures could belong, contribute and add to the rich tapestry of our national fabric. These statements, advertisements and messages continue to be produced in countries such as Canada and New Zealand.<sup>6</sup>

In the absence of political leadership which promotes understanding, harmony and celebration of diversity in Australia through its messaging, this role has not only been left for civil society, but for commercial entities such as Meat and Livestock Australia and Westpac bank to fulfil.<sup>7</sup>

## SECTION 2

### **Rights and obligations of citizenship, including naturalisation and revocation, and the responsibility of the state to its citizens in both national and international law**

To be an Australian citizen means to be truly Australian and belong to this nation.

Under current refugee policy for people who arrived by sea to seek safety, citizenship remains an unattainable aspiration. Temporary Protection Visas provide no pathway at all to permanent residency and citizenship. Safe Haven Enterprise Visas will only provide this opportunity in the narrowest of circumstances.

Citizenship applications, from people who have been permanent residents for many years and who have submitted those applications a number of years ago, have still not been processed. This is despite a Federal Court finding in December 2016 that the Immigration Minister unreasonably delayed making decisions on applications for citizenship by refugees.<sup>8</sup>

Combined Refugee Action Group has regular contact with people who are affected by temporary visas and lack of access to citizenship, and the following statements are indicative of the impact of these policies on their lives:

"There is no end point for us. Because of temporary visas we will never be Australian citizens; we will always be asylum seekers. Our minds are full of terrible things that happened to us that we want to forget. But we can't forget. We have to remember every detail for our applications for refuge all over again every three or five years. We can't put these things behind us and move on. We can't build our lives properly here because we are always thinking that maybe we will be sent back to danger next time we have to apply. I love this community. I have safety here, I have friends and people who are like family to me and I have a good job. But without permanent residency and citizenship, none of that is certain."

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<sup>6</sup> Citizenship and Immigration Canada advertisement: <https://www.youtube.com/watch?v=8LHpNhgC-a0>

New Zealand Police Recruitment advertisement: <https://www.theguardian.com/world/video/2017/nov/27/new-zealands-latest-police-recruitment-video-goes-viral>

Statement by Justin Trudeau: <https://www.rappler.com/world/regions/us-canada/159834-canada-trudeau-welcomes-all-immigrants-twitter-message>

Statement by Jacinda Ardern: [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12220077](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12220077)

<sup>7</sup> Article in The Land publication regarding Meat and Livestock Australia's 2016 advertisement

<https://www.theland.com.au/story/4770059/mla-lamb-ad-wins-for-third-year-running-video/>  
Westpac Bank's television and cinema commercial 2019 <https://www.westpac.com.au/about-westpac/media/videos-and-podcasts/tv/>

<sup>8</sup> News report in Sydney Morning Herald <https://www.smh.com.au/politics/federal/immigration-minister-peter-dutton-wrong-on-refugees-citizenship-federal-court-finds-20161216-gtd05o.html>

“Education is vital for everyone to be successful in their lives. People with temporary refugee visas can’t go to university to get further education. Many of us got good marks at school but had to reject university offers because we could not afford to pay international student fees. Some people who have been working for years have saved money and want to buy property for a home or a business. Without permanent visas, they have trouble getting loans and have to pay foreign investor stamp duty, even though they have been paying tax here for a long time. Our visas are very uncertain. We can’t see our loved ones for years and we don’t have a sense of belonging without having access to citizenship.”

“I am getting past the age when I should be married. When I meet a nice girl who I think maybe I could share my life with, her family asks, “How is the visa?”. Family approval is very important. Families don’t want to give their blessing for their daughter to marry someone in my uncertain situation. I think that I will have to spend my life alone because of this.”

“In my country, people like me are killed and our government does nothing to protect us. We went to a nearby country to try to be safe but we had no rights there. They threw me out when they discovered that I was working to support my family. It was very dangerous for me to be in my homeland again so I had to get out quickly. I travelled to Indonesia to try to register with the UNHCR, but I was put in prison there for not having a visa. After I was released, I came to Australia, but Australia doesn’t want me because I came by boat. I am a refugee but all I can get is a temporary visa. I can never be a citizen here. I feel that there is nowhere on the earth that I belong.”

“I have not seen my family for nine years. I made my way here for safety, hoping to be able to send for them once I got my refugee decision, but I was not permitted to bring them through family reunion. They are now waiting in a transit country because it was too unsafe for them to stay in our homeland. They cannot visit Australia because they have no travel documents, and my applications for a visa to visit them are rejected by that country because I do not have Australian citizenship. I feel that I will never be able to see them again.”

“I have lived here as a permanent resident for more than eight years now. I applied for citizenship almost three years ago, but still nothing. I only ever took two months of Centrelink payments when I was first released from immigration detention and was looking for work. Since then I have been working hard and paying my taxes all this time. I am following the laws and contributing to Australia. I don’t know why Australia does not want me as a citizen.”

The cancelling of visas where people have been convicted of criminal offences, and the revocation of citizenship if someone is merely *suspected* of terrorism, is a very dangerous strategy. People can be left effectively stateless; unable to return to countries of origin due to risk of harm through persecution, but not permitted to continue to live in the Australian community. This practice means that people may be kept in immigration detention indefinitely (which is in opposition to the international law treaties Australia has ratified). Alternatively, they are at best sent to places where they have little if any connection, or at worst returned to situations of ongoing persecution where their lives will be at risk. Many people in this situation have families here, which include children who are Australian citizens. Giving the Minister power to revoke visas or citizenship without judicial review is an overreach of government, an avenue for abuse of power, and a threat to democracy.

The following case study provides an example of the kind of people who can be affected by the current policy (name and some identifying details have been changed to protect privacy):

“Masozzi” arrived in Australia many years ago through the Humanitarian Resettlement program as a child. All of her immediate family members were killed in internal conflict in her homeland, and she escaped with an extended family member who became her guardian.

Masozzi was convicted of charges relating to a car crash in which she was driving under the influence of alcohol and someone was killed. After serving time in prison for these charges, her permanent protection visa was cancelled. Since then, Masozzi has been held indefinitely in immigration detention centres. She has no connections in her country of origin and fears for her safety if she is forcibly returned. The only way that she can remain in Australia is to apply again

for asylum. Given the current rate of the processing of asylum applications, Masozi could well be held in indefinite detention for years to come.

She is extremely remorseful for her act of stupidity which resulted in the loss of a life, and she will carry that guilt forever. She has paid the penalty of a prison sentence. Her punishment should not include being sent to a place of persecution or being subjected to indefinite detention.

Combined Refugee Action Group believes that people in Australia should be treated equally under the law. People such as Masozi, who have served the penalties for their offences, should be free to continue their lives in Australia, rather than having their visas cancelled.

### SECTION 3

#### **The extent to which nation states balance domestic imperatives and sovereignty and international obligations**

The domestic requirements of government must be balanced with the need to uphold international law. International human rights law is designed to protect the lives and liberty of all, and of vulnerable people in particular. Many of Australia's current policies for refugees, people seeking asylum and migrants are in conflict with the international law treaties Australia has ratified.

*The United Nations Refugee Convention and Protocol* states that:

- People with a well-founded fear of harm due to persecution based on race, religion, nationality, social group or political opinion must be offered protection by signatory states, and not sent back to persecution.<sup>9</sup>
- Refugees have a lawful right to enter a country for the purposes of seeking asylum, regardless of how they arrive or whether they hold valid travel or identity documents. The Convention stipulates that what would usually be considered as illegal actions (e.g. entering a country without a visa) should not be treated as illegal if a person is seeking asylum.<sup>10</sup>
- Once an individual has been assessed as in need of protection, that protection should be extended to the individual's immediate family through family reunification, in-keeping with the Principle of Unity of the Family<sup>11</sup>

The current 'Fast Track' refugee assessment process, with its very limited review provisions, and the practice of undertaking 'enhanced screening' for people seeking asylum whose vessels are intercepted at sea, increases the likelihood of refoulement – people being returned to persecution which may include torture and/or execution.

Mandatory offshore detention for people seeking asylum by boat is a penalty for people who enter Australia without valid documentation, despite the directive in the Refugee Convention not to penalise people for this.

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<sup>9</sup> OHCHR The principle of non-refoulement under international human rights law  
<https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

<sup>10</sup> Refugee Council of Australia: <https://www.refugeecouncil.org.au/boat-arrivals/>

<sup>11</sup> UNHCR Family Reunification information: <https://www.unhcr.org/en-au/excom/exconc/3ae68c43a4/family-reunification.html>

Family reunification is not permitted with Temporary Protection Visas or Safe Haven Enterprise Visas. People with Permanent Protection Visas have had their applications for family reunion deliberately delayed through policy, and their applications for citizenship administratively delayed.<sup>12</sup>

*The International Covenant on Civil and Political Rights* protects liberty and states that people must not be detained arbitrarily.<sup>13</sup> People have been held indefinitely in detention centres, and detention-like settings, on Manus Island and Nauru for more than six years without any charge or release date. The UN has ruled that Australia's indefinite detention of refugees with negative security clearances is unlawful.<sup>14</sup>

*The Convention on the Rights of the Child* states that:

- The best interests of the child must be a primary consideration in all actions concerning children<sup>15</sup>
- Detention must be a measure of last resort and for the shortest appropriate period of time; children must not be deprived of liberty unlawfully or arbitrarily.<sup>16</sup>
- Children in detention have the right to be treated with humanity and respect for the inherent dignity of the person.<sup>17</sup>
- Children have the right to enjoy, to the maximum extent possible, development and recovery from past trauma.<sup>18</sup>

In the case of children arriving by boat with their families to seek safety from persecution, mandatory detention has been the first course of action, rather than the last resort. Children were detained on Nauru for up to six years, and continue to be detained indefinitely in onshore centres, despite medical and mental health professionals advising that this is not in the best interests of children and is significantly detrimental to their development and their trauma recovery.<sup>19</sup> Ironically, many laws within Australia (e.g. the Family Law Act), legislated by Australian governments, place the best interests of the child as the priority for enforcement of these laws.

The United Nations Special Rapporteur on Torture found that various aspects of Australia's asylum seeker policies violate the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The report found that Australia's indefinite detention of asylum seekers on Manus Island; the harsh conditions; the frequent unrest and violence inside the centre; and the failure to protect certain vulnerable individuals; all amount to breaches of the Convention.<sup>20</sup> The UN Special Rapporteur also stated, "The Migration and Maritime Powers

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<sup>12</sup> Refugee Advocacy and Casework Service information: <https://www.racs.org.au/family-unity-is-a-human-right-but-not-for-refugees-in-australia/>

<sup>13</sup> Article 9, International Covenant on Civil and Political Rights <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>14</sup> News report from The Guardian 2016: <https://www.theguardian.com/law/2016/may/18/australias-indefinite-detention-of-refugees-illegal-un-rules>

<sup>15</sup> Article 3(1) Convention on the Rights of the Child

<sup>16</sup> Article 37(b) Convention of the Rights of the Child

<sup>17</sup> Article 37(a),(c) Convention of the Rights of the Child

<sup>18</sup> Article 6(2), 39 Convention of the Rights of the Child

<sup>19</sup> Article on statement by Royal Australian and New Zealand College of Psychiatrists

<https://www.theguardian.com/australia-news/2015/feb/27/children-in-immigration-detention-should-be-held-no-more-than-three-days>

<sup>20</sup> Human Rights Law Centre article regarding Special Rapporteur's report 2015 <https://www.hrlc.org.au/news/un-finds-australias-treatment-of-asylum-seekers-violates-the-convention-against-torture>

Legislation Amendment ... violates the Convention Against Torture because it allows for the arbitrary detention and refugee determination at sea, without access to lawyers."<sup>21</sup>

It is not acceptable for Australia to have such little regard for international human rights law, developed for the purpose of protecting people's health, lives and liberties, in order to exercise sovereignty. The UN has repeatedly appealed to Australia to improve its treatment of people seeking safety. The Australian government has continued to ignore these appeals, and Australia's international reputation has suffered as a result.

## SECTION 4

### Other related matters – Sustaining democracy

The discussion paper provided by the Legal and Constitutional Affairs References Committee made many references to the concept of democracy. The questions the paper posed on this topic included:

Why are there declining levels of public trust and satisfaction in democracy?  
What are the implications of declining trust for Australia's democracy? How can these trends be reversed?  
Would you distinguish between dissatisfaction with democracy and dissatisfaction with liberal democratic values such as the rule of law and separation of powers?  
How should we consider tensions between representative and delegated democracy? How should governments represent both the majority and the minority?

Section 1 of this submission refers to misuse of language and the provision of misinformation for the purpose of political expediency. This creates public mistrust in the individuals who have been elected to lead the nation.

Election campaigns based on misinformation, which rely on attacks against opposing parties/candidates, or which resort to using tactics of trickery to win votes<sup>22</sup>, create further public mistrust and dissatisfaction in democratic processes. This leads to people disengaging from politics and policy and even relinquishing their right to vote. The 2019 Federal Election saw one of the lowest voter turnouts since the advent of compulsory voting in Australia.<sup>23</sup> As well as this, 835,223 informal votes were cast across the nation by those who did attend polling centres. 5.54% of the total votes cast was informal; an increase of 0.49%.<sup>24</sup>

Different sets of issues are of concern to different electorates across the nation. People also often use their vote to support or oppose one particular policy (or their perception of it) which they feel will directly affect them. In light of this, and the proportion of non-participation and informal voting, claims made that election results provide a government with 'mandates' for each of its policy areas are misguided. Independent single-issue opinion polls and public engagement through petitions, protests, letters/emails/phone calls to elected representatives, meetings with politicians and Senate Inquiry submissions provide a much more credible gauge of public support or opposition to specific policies. However, these responses are often ignored by those in political leadership. Some examples of this are:

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<sup>21</sup> <https://www.theguardian.com/australia-news/2015/mar/09/un-reports-australias-immigration-detention-breaches-torture-convention>

<sup>22</sup> Sydney Morning Herald article regarding complaint about misleading election signs: <https://www.smh.com.au/federal-election-2019/liberals-accused-of-misleading-chinese-voters-by-imitating-aec-signage-20190518-p51op4.html>

<sup>23</sup> Sydney Morning Herald article on voter engagement in 2019 Federal Election: <https://www.smh.com.au/federal-election-2019/voter-turnout-at-record-low-after-young-people-disengage-20190530-p51sol.html>

<sup>24</sup> AEC election results 2019: <https://results.aec.gov.au/24310/Website/HouseInformalByState-24310.htm>

- A poll conducted by the Australia Institute which found that 63% of the more than 1400 people surveyed believed that people arriving by boat to seek asylum should be allowed to settle in Australia if they are found to have a valid claim for protection.<sup>25</sup> Regardless of this poll, and others obtaining similar results, the government has continued to push ahead with its Lifetime Ban Bill to prevent the people in the offshore processing cohort from being able to apply for Australian visas.
- More than a quarter of a million signatures were gathered in a petition calling for a Ministerial Intervention to allow the Tamil family from Biloela to be allowed to stay in Australia. Numerous demonstrations, attended by large numbers of people, have been held across the nation to publically support the family remaining here. However, the government is refusing to move from its position despite the 'public interest' element for Ministerial Interventions.
- Submissions to a Senate inquiry from Royal Australian College of General Practitioners; Royal Australasian College of Physicians; Australian and New Zealand College of Anaesthetists; Medecins Sans Frontieres Australia; Australian Association of Social Workers; Australasian College for Emergency Medicine; Victorian Refugee Health Network; The Royal Australian and New Zealand College of Psychiatrists; The Australian Medical Students' Association; Cabrini Health; St Vincent's Health Australia; and a number of individual health professionals all oppose the repeal of legislation for urgent medical transfer for people in offshore detention.<sup>26</sup> However, the government has indicated its intention to persist with its policy position and repeal the legislation rather than following the expert advice obtained through this democratic process.

As an organisation focused on fair and decent asylum and refugee policy and legislation, Combined Refugee Action Group closely watches bills presented to Parliament which concern asylum, refuge and citizenship. In recent years we have noticed government over-reach through attempts to weaken the rule of law and to restrict natural justice in bills for proposed legislation. Some examples of this are:

### **The Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill** <sup>27</sup>

The bill gave permission for an authorised officer to undertake actions likely to cause grievous bodily harm. It stated that proceedings may not be instituted or continued in any court against the Commonwealth in relation to an exercise of the power to use that level of force in immigration detention facilities if was "exercised in good faith", "despite anything else in this Act or any other law".

Under the bill, the only avenue for justice was an internal complaint process. The bill stated that investigations for complaints could be either be "conducted in any way the Secretary thinks appropriate.", or not at all if the Secretary decided that the complaint was "frivolous, vexatious, misconceived, lacking in substance or is not made in good faith"; or "not justified in the circumstances."

Thankfully, this bill did not proceed after the Senate Inquiry to which Combined Refugee Action Group made a submission.

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<sup>25</sup> Guardian article on Australia Institute poll <https://www.theguardian.com/australia-news/2016/jun/29/majority-of-australians-say-refugees-who-arrive-by-boat-should-be-let-in-poll-finds>

<sup>26</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Repair\\_Medicaltransfers/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Repair_Medicaltransfers/Submissions)

<sup>27</sup> Good Order of Immigration Detention Facilities Bill [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5415](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5415)



## **Australian Border Force Bill 2015<sup>28</sup>**

Section 36 and 40 of the Border Force Bill stated that if a person was killed or seriously injured in an incident in which a staff member was under the influence of drugs or alcohol, the relevant staff person would be subjected to testing. However, it also stated that the results of the drug and alcohol test would not be admissible in any proceedings. The Secretary would have the power to decide if the staff member continued in their duties or if their employment was terminated. According to the bill, this would apply even when death or injury was caused by use of force or firearms, or in operations with vessels or vehicles.

Section 41 and 42 of the bill stated that any disclosure of protected information would carry a penalty of two years imprisonment, unless the information disclosed was requested by a tribunal or court. Given that information would need to be disclosed to trigger an investigation by a court or tribunal in the first place, the intention of these sections of the bill was to prevent potential 'whistle-blowers' from reporting human rights abuses and breaches of other areas of law.

This bill, once passed into legislation, created increased secrecy and reduced accountability for the Minister and government departments and agencies. An adjustment to the legislation rightly occurred in 2016 when an amendment ensured the secrecy and disclosure provisions of the Border Force Act no longer applied to a comprehensive list of health professionals.

As Malcolm Fraser stated in an article in the Sydney Morning Herald in 2014:

"Secrecy is completely inadequate for democracy but totally appropriate for tyranny...  
...When secrecy operates, it infects the entire system. The minister's insistence on a military operation, the use of militaristic language and a deliberately covert approach, akin to being under attack, guides the response of all within the system who believe they can act with impunity. The government's persistent response that the navy cannot ever be questioned demonstrates the extreme level of this secretive approach. No person or agency should be totally immune from scrutiny when there are legitimate questions to be answered about events that have occurred. This does not equate to an attack on those involved, but to a functioning democracy ensuring accountability and review when matters of concern arise."<sup>29</sup>

## **Australian Citizenship Legislation Amendment (Strengthening Commitments) Bill 2018<sup>30</sup>**

As the Refugee Council of Australia pointed out in its submission to the Senate committee inquiry on this bill, the proposed amendments would convert the process of obtaining citizenship from one "governed by the rule of law to one governed by the caprice of a Minister." The bill allowed the Minister to set aside findings of the Administrative Appeals Tribunal and to exclude merits reviews of decisions made by the Minister, therefore granting the Minister an inappropriate level of discretion in decisions and undermining the rule of law.<sup>31</sup>

Recent media articles<sup>32</sup> report the appointment of 65 former Liberal Party staffers, former Liberal or National politicians, party donors, members, unsuccessful Liberal candidates or Liberal

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<sup>28</sup> Border Force Bill 2015

[https://www.apf.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5408](https://www.apf.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5408)

<sup>29</sup> <https://www.smh.com.au/opinion/manus-island-so-many-questions-one-simple-solution-20140220-333sn.html>

<sup>30</sup> Citizenship Legislation Amendment Bill 2018

[https://www.apf.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=s1123](https://www.apf.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1123)

<sup>31</sup> Submission by Refugee Council of Australia <https://www.refugeecouncil.org.au/citizenship-bill-2018/6/>

<sup>32</sup> Series of articles regarding AAT: <https://www.crikey.com.au/inq/the-big-stack/>

government employees to decision-making positions in the Administrative Appeals Tribunal (AAT) over the past six years. The articles report that many of these appointees have no legal qualifications and that established processes have been set aside for their recruitment. As the AAT is responsible for reviewing immigration decisions such as refugee determinations and visa cancellations, it must operate in complete independence. Without appropriate separation of powers there is a real risk that members will make determinations according to partisan policy positions, rather than procedural fairness and the merits of individual cases.

As detailed in Section 1 above, refugees themselves have been excluded from participation in democracy (despite contributing to Australian communities for many years) due to lack of access to permanency and citizenship or by administrative blockages to the processing of their citizenship applications. People seeking a safe place to rebuild their lives, after being subjected to systematic persecution by governments, theocracies, dictatorships and extremist groups, value nothing more highly than democracy. Democracy is the means by which safety, peace and freedoms are protected. To be denied access to full participation in that democracy continues their experience of discrimination.

## CONCLUSION

At a joint press conference in 1977, Foreign Minister Andrew Peacock and Immigration Minister Michael MacKellar appealed to politicians “not to subordinate the issues [raised by the arrival of Vietnamese asylum seekers] to electoral considerations, not to exaggerate the dimensions of the problem, not to attempt to exploit the assumed fears of sections of the Australian public, and not to forget the human tragedy represented by these few small boats”.

They stated that their government would not “make examples” of refugees “by indiscriminately turning some of them back”. They refused to “risk taking action against genuine refugees just to get a message across”, as that “would be an utterly inhuman course of action.”<sup>33</sup>

Combined Refugee Action Group longs to see this kind of leadership again in Australia. Accordingly, we recommend the following:

- International Human Rights Law must be upheld in all legislation and operations applying to people seeking safety, people who are refugees and people who are migrants.
- A non-partisan approach based on fairness and decency must be adopted by our nation’s leaders. The principle of ‘causing no harm’ must be applied in all policy and legislation considerations to find genuinely benevolent solutions to complex issues.
- In order to promote harmony in Australian communities, Federal Parliament must take a lead role in promoting positive messages about multiculturalism and refugees, and refrain from spreading toxic misinformation.
- Refugees must be given permanency and timely access to citizenship to allow a sense of true belonging and the opportunity to fully engage in democracy.
- Steps should be taken to ensure democracy is not undermined by ministerial overreach and lack of accountability. Separation of powers and respect for rule of law are crucial for a healthy democracy and the administration of justice.

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<sup>33</sup> Article by Klaus Neumann, Professor of History at the Swinburne Institute for Social Research: <https://insidestory.org.au/queue-jumpers-and-the-perils-of-crossing-sydney-harbour-on-a-manly-ferry/>