Submission to Senate Legal and Constitutional Affairs Committee

Australian Border Force Bill 2015 and the Customs and Other Legislation Amendment (Australian Border Force) Bill 2015

Introduction

The Combined Refugee Action Group (CRAG) is based in Geelong, Victoria, and brings together people from a variety of backgrounds –Community and Faith Groups, Unions, Refugee Support Groups, Social Justice and Social Action Groups, students and individuals - united by the shared aim of advocating for just, humane and welcoming policy towards asylum seekers and refugees. We have around 600 people on our membership list, as well as a following of over 1,600 on social media. CRAG advocates for policies that are informed by, and aligned with, the UN Refugee Convention and Protocol, and that are developed in partnership with our regional neighbours, to ensure the safety of vulnerable asylum seekers. CRAG joined a police-estimated crowd of 15,000 people in Melbourne on Sunday 29-03-15 to walk for justice for refugees and asylum seekers and to oppose the harsh, cruel, punitive policies of the Australian Government.

We have very grave concerns about the *Australian Border Force Bill 2015 and the Customs and Other Legislation Amendment (Australian Border Force) Bill 2015* which are currently before Parliament. We oppose these Bills on the grounds that they pave the way for further human rights abuses to those which have already been documented recently by *The Forgotten Children* Report, *The Moss Report* and the UN Special Rapporteur on Torture.

Points of Concern

1. The Bills allow a dangerous lack of accountability

If passed into legislation, the Australian Border Force Commissioner will have complete control of the operations of the Australian Border Force, responsible only to the Minister for Immigration. This provides an undue amount of power to both the Commissioner and the Minister for Immigration, and makes the Minister responsible to no-one.

Section 10 of the Border Force Bill gives the Australian Border Force Commissioner power to do all things considered necessary or “convenient” to perform his or her duties. This is an open invitation for the abuse of power.

Section 23 in the Border Force Bill allows the Minister to give directions to the Border Force Commissioner about policies that should be pursued, or priorities that should be followed, in relation to the operations of the Australian Border Force. The Minister has no obligation to declare these directions to the House of the Parliament until fifteen sitting days after the direction has been given. This allows the Minister to act however he/ she chooses, without approval from Parliament.

Section 58 gives the Minister power to make rules prescribing the carrying out of the Act wherever required, necessary or “convenient”. This affords the Minister an open-ended amount of power to undertake whatever he/ she chooses.

2. The Bills encourage increased secrecy

A constant criticism of current policies and operations regarding asylum seekers and refugees is the level of secrecy under which the Immigration Department operates. These Bills serve to increase secrecy and to ensure that it is maintained at all costs.

Under the Bills, the Border Force Commissioner must make and subscribe to an oath, but there is no detail regarding what that oath will entail and what the Commissioner will be bound to.

Section 24 of the Border Force Bill states that staff, including people who work for agencies under the public service definition; people who work for State and Territory Government Departments; people who work for foreign governments; and people who work for public international organisations, will be also requested to make and subscribe to an oath. Again, there is no detail about what that oath will entail. It is likely that the oath will prevent individuals and organisations (particularly public international organisations such as Red Cross, the United Nations and Amnesty International) from fulfilling the duties of their roles.

Part 6 of Border Force Bill is entitled, "Secrecy". Section 41 and 42 state that any disclosure of protected information will carry a penalty of two years imprisonment, unless the information disclosed has been requested by a tribunal or court. No information will ever be requested by a court or tribunal if there is no opportunity for disclosure of problems in the first place. It appears that the purpose of this Bill, therefore, is to prevent potential 'whistle-blowers' from reporting human rights abuses and breaches of other areas of law, and to prevent resulting investigations.

3. The Bills remove the right of workers to act according to conscience or other areas of law

Section 25 of the Border Force Bill states that the Immigration and Border Protection workers must, in performing functions or exercising powers under a delegation, comply with <u>any</u> written directions of the Australian Border Force Commissioner and the Border Force Secretary. Therefore, there is no provision for staff whose roles fall under Border Force direction, to refuse to comply with directions if they conflict with conscience, humanitarian concerns, or with other areas of common and criminal law.

Section 26 of the Border Force Bill states that the Australian Border Force Commissioner may, by writing, give directions to people who work for agencies under the public service definition; people who work for State or Territory Government Departments; people who work for foreign governments; people who work for public international organisations; consultants and contract workers; people who work for companies which are subcontracted to provide services. These directions must be followed. This will prevent workers from following the directions and policies of their own companies and organisations, and will prevent public international organisations such as Red Cross and the United Nations, from appropriately fulfilling their roles.

Section 52 of the Border Force Bill gives the Secretary or the Australian Border Force Commissioner power to terminate the engagement of a person as a consultant or contractor if the person fails to comply with a direction under the legislation. Consultants or contractors will not be permitted to act according to conscience and humanitarian concerns and the policies and values of their organisations. The capacity of organisations to provide welfare services to detainees in immigration detention facilities will be severely limited.

Further to this, staff who feel they are unfairly dismissed will have no avenue of objection. The provisions of the Fair Work Act 2009, dealing with unfair dismissal, will not apply to members of the Australian Public Service in some circumstances under these Bills.

4. The Bills allow Border Force to operate outside of existing laws and prevent the course of natural justice

While certain workers will be compelled to give information, answer questions or produce documents which may incriminate them or others or expose them to penalties, the information, answers or document will not be admissible as evidence in legal proceedings.

Section 36 and 40 of the Border Force Bill state that if a person is killed or seriously injured in an incident in which a staff member is under the influence of drugs or alcohol, the relevant staff person will be subjected to testing. However, the results of the drug and alcohol test will not be admissible in any proceedings. The Secretary will have the power to decide if the staff member continues in their duties or if their employment is terminated. This extends to death or injury caused by use of force or firearms, or in operations with vessels or vehicles. To put it bluntly, staff who kill asylum seekers while under the influence of drugs or alcohol, will not be brought to account.

Conclusion

The *Australian Border Force Bill 2015 and the Customs and Other Legislation Amendment (Australian Border Force) Bill 2015* are very dangerous documents. The Border Force Bill sets out the provisions, and the Amendment Bill seeks to include those provisions in existing Customs and Migration legislation. If passed into legislation, these Bills will provide the Minister of Immigration and Border Force with absolute power to engage in human rights abuses, and to force staff to do likewise, without legal repercussions. The Migration and Maritime Powers Amendment legislation which was passed in December 2014 has already removed natural justice from many areas of Maritime and Migration Legislation, and has increased the likelihood of human rights abuses. CRAG calls on the Senate to oppose these Bills, in their entirety, in order to prevent further human rights abuses, injustice, secrecy, and lack of accountability.