Submission to Senate Inquiry re: Migration Amendment Bill

To: The Honourable Members of the Senate Legal and Constitutional Affairs Legislation Committee

From: Margery Cass for the Rockhampton Asylum Seekers Action Group

Re: MIGRATION AMENDMENT (REMOVAL AND OTHER MEASURES) BILL 2024

Outline

We submit that the amendments to the Bill as currently framed are unjust and endanger human life.

Australia officially recognises human rights and should stand by its promises.

Many asylum seekers have had their claims unfairly rejected by an unjust system.

Legalising forced deportations of asylum seekers amounts to murder.

It is imperative that this bill be changed to ensure human rights are respected and people's safety is guaranteed.

The RASAG Ethos

The Rockhampton Asylum Seekers Action Group is a small group which tries to offer support to refugees and asylum seekers in our local area. We are Christians of different denominations, and firmly believe in the importance of justice, compassion and respect.

None of us are lawyers, so this submission is presented as a layperson's view only.

What Constitutes Murder?

In the Criminal Code of Queensland and other states, any person who participates in deliberately taking another person's life, whether through encouraging the murderer, offering assistance to the murderer, or delivering the victim into the hands of a murderer, or if the participant is involved in any part of a process where murder is the probable consequence, they are a party to murder.

Any asylum seeker who is returned to a country where they will be murdered because of their religion, their ethnic group, or their sexuality has been effectively murdered by Australia, and this is unacceptable. In many cases it goes past murder to complicity in genocide, and this must never be legalised in any democratic country.

Unsafe Countries

There are currently 22 countries listed on the DFAT website as unsafe for travel. They are: Russia, Lebanon, Libya, Iran, Haiti, Mali, Ukraine, North Korea, Yemen, Somalia, Chad, Burkina Faso, Syria, Iraq, Venezuela, Afghanistan, Niger, Myanmar, Sudan, Central African Republic, Belarus and South Sudan.

The Global Peace Index's list of the least safe countries is very similar: Nigeria, Myanmar, Pakistan, Iran, Turkey, North Korea, Burkina Faso, Ethiopia, Central African Republic, Mali, Iraq, Sudan, Somalia, Ukraine, Russia, DR Congo, South Sudan Syria, Yemen, and Afghanistan.

Common decency demands that you don't deport someone to a country that you know is dangerous and are warning everyone to avoid.

A Flawed Process

We suspect that Parliament already agrees with this first point because of the careful use of language to minimise the danger involved and to emphasise that the asylum seekers in question have had their claims rejected by the Immigration Department. This Bill is an attempt to portray them as imposters and their countries as safe.

At RASAG we know that the Immigration Department's assessment process is flawed and not to be trusted, as it has disadvantaged a dear friend of ours, referred to in this submission as TM. TM, a Faili Kurd from Iran, arrived by boat with her brother in 2012, and was denied a protection visa, although her husband in identical circumstances had arrived in 2010 and had been granted protection and subsequently citizenship. Reading through the judgement from the IAA when she appealed this decision, we find the reviewer repeatedly comparing her story to the country information supplied from Tehran, and casting doubt on any of her statements that did not align with it. Thus the reviewer had "difficulty accepting" that her parents who originally came from Iraq, had not registered as refugees. She was "not satisfied" that the family was afraid of the authorities. She found it "implausible" that TM would have tried to escape via Tehran. "Country information did not support" TM's story of using a fake passport to exit Iran. The entire review had no logical argument. There was no evidence that TM could have been an Iranian citzen as the reviewer contends. There was only the repetition of doubt and disbelief, and that apparently was enough to reject her case.

As well as disbelief, the reviewer also relied on erasure. There is not a single mention of the Basij, the secret morality police that are the main persecutors of minority groups such as the Kurds and caused the death of Mahsa Amini in 2022. "The authorities" are consistently painted as helpful people who provide housing, education and medical services to Kurds who are officially registered. And yet by 2015, 22% (the largest group) of people held in immigration detention by Australia were from Iran. That does not indicate helpful authorities. We have to conclude that the Immigration Department was not acting in good faith in giving TM a negative assessment.

There is an appeal process, but it examines processes rather than facts. TM's husband was by now an Australian citizen, but appeal judgements laid the blame on TM for not requesting early enough that her husband's file be accessed.

There is no reason to suppose that TM's case is an isolated one, in fact perusal of the IAA website shows it is not. There must be many people who have been subjected to the same treatment and are now labelled as non-refugees. The strategies of denial, disbelief and erasure in the assessment process are symptomatic of a hostile system. People like TM are deserving of protection regardless of public perception that they are undesirable in some way. Their lives don't stop mattering because the Immigration Department has downplayed the danger they face. And after having lived in the community in many cases for over a decade, demonstrating their friendliness, trustworthiness and shared values, they should be rewarded not punished for their contribution. This Bill attempts to use the "non-citizen" or "removal pathway" label as justification for unreasonable punishment – and deportation to a country such as Iran definitely constitutes unreasonable punishment.

International Obligations

As a member of the United Nations, Australia is a signatory to the Refugee Convention and other human rights agreements including OPCAT. We are happy to impose those standards on others – at the time of writing, the Foreign Minister has been calling on Israel to respect internationally agreed rules-based order – but less eager to follow them ourselves.

It is regrettable that Australia has been in breach of the Refugee Convention for more than a decade without being held accountable by the international community, however that only increases the public's responsibility to let the government know when their actions are unacceptable, and this Bill is an example.

Community Obligations

Labor went to the last election promising to allow rejected Tamil asylum seekers Priya, Nades and their daughters to return home to Biloela. Having delivered on that promise, it makes no sense to introduce legislation that would prevent similar families from obtaining the same outcome. The public has a right to expect that their elected leaders keep their promises and respond to community concerns. The part of the amendments that targets parents and makes them criminally reponsible if they try to protect their children from deportation is clearly in violation of both community standards and Labor's mandate.

Framing

The Explanatory Memorandum for this Bill states:

"The Bill strengthens the integrity of the migration system by requiring non-citizens who are on a removal pathway and have exhausted all avenues to remain in Australia to cooperate in

efforts to ensure their prompt and lawful removal. The amendments in the Bill are necessary to address circumstances where non-citizens who have no valid reason to remain in Australia, and who have not left voluntarily as expected, are not cooperating with appropriate and lawful efforts to remove them."

This statement of aims is filled with the same denial of reality that TM was subjected to. Wanting not to be killed is – to a reasonable person - an extremely valid reason for wanting to stay in Australia, and most potential deportees would share it. "Lawful efforts to remove them" may be lawful in the sense that they were passed by Parliament, in the same way that deportation of Jews for extermination was legal in occupied Europe in the 1940s. That does not excuse the abuse of internationally-agreed human rights which were introduced post-World War II to prevent such atrocities ever occurring again. And "integrity" is a wonderfully emotive word. It implies not just honesty but strength in holding one's moral principles in the face of opposition – except it is applied here in the engineering sense. It is the structural integrity of the border that is supposedly threatened by the Government's inability to deport people recklessly. No system, immigration or otherwise, has a value that exceeds that of human life. Rather, any system that does not protect human life is worthless.

This entire memorandum is insidiously framed in such a way as to dehumanise people in genuine need of protection, and to justify their murder as a necessary part of maintaining a symbolic structure.

Actual Objectives

We understand that this Bill was introduced in haste to circumvent an imminent High Court decision that might protect a bisexual asylum seeker from deportation to Iran. This is an inappropriate response by Parliament who should be demonstrating respect for the law and an understanding of how our Constitution protects democracy. Trying to evade High Court decisions is a terrible example to set for the Australian people. We have a constitution which deliberately separates the judicial, legislative, and executive powers, forming the cornerstone of our democracy. The concentration of power is inherently anti-democratic, so it is concerning that this Bill gives exceptional powers to the Minister, while also attempting to minimise the Minister's need to accept responsibility, apparently in response to a previous High Court decision.

Method

There are thus two apparent motivations for the Bill: to appear tough on borders by having greater power to deport asylum seekers, and to evade High Court decisions by strengthening the Immigration Minister's executive power.

We do not approve of either objective, nor can we see that the amendments to the Bill are a proportionate response to achieve them.

The following discussion of specific clauses should not be necessary if Parliament could demonstrate some actual integrity and ensure all legislation is consistent with international law and conventions, and is also consistent with the intent and spirit of the Constitution.

Clauses Requiring Change

The primary clauses that require change are those which are in clearly in breach of internationally defined human rights, ie: those which claim persecution and significant harm are not reasonable excuses for refusing deportation, and those which state refoulement obligations can be disregarded, or that the rules of natural justice do not apply.

The clauses concerning ministerial responsibility also require change. It is important that when a power may only be exercised by the minister personally that the Minister also has a corresponding duty to exercise that power responsibly, which must include review processes and appropriate duty of care. Furthermore, requiring the Minister to inform Parliament about the designation of "removal concern" countries and then offering protection for non-compliance seems to anticipate an unacceptable degree of secrecy.

We are not offering alternative phrasing for these clauses. The highlighted words are those of particular concern to a layperson, however we recognise that drafting legislation is a complex business. Our preferred option in this situation would be to reject the amendments in their entirety.

3 At the end of Division 8 of Part 2 Add:

Subdivision D — Duty to cooperate in relation to removal and removal concern countries

199C Minister may give removal pathway directions

(5) However, if the parent or guardian of the child is a removal pathway non-citizen, the Minister may give a **removal pathway direction in relation to the child to the parent or guardian.**

199E Offence for non-compliance with removal pathway direction

(1) **A person commits an offence if**:

(a) the person is a removal pathway non-citizen; and

(b) the person is given a removal pathway direction; and

(c) the direction has not been revoked; and

(d) the **person refuses or fails to comply with the direction**.

(3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the Criminal Code).

(4) For the purposes of subsection (3), **it is not a reasonable excuse** that the person:

(a) has a **genuine fear of suffering persecution or significant harm** if the person were removed to a particular country; or

(b) is, or claims to be, a person in respect of whom **Australia has non-refoulement obligations**; or

(c) believes that, if the person were to comply with the removal pathway direction, the person would suffer **other adverse consequences**.

199F Designation of removal concern country 199F

(1) The Minister may, by legislative instrument, designate a country as a removal concern country if the Minister thinks it is in the national interest to designate the country to be a removal concern country.

(5) **The rules of natural justice do not apply** to the exercise of the power under subsection (1) or (3).

(6) If the Minister designates a country under subsection (1), the Minister must cause to be laid before each House of the Parliament:

(a) a copy of the designation; and

(b) a statement of the Minister's reasons for thinking it is in the national interest to designate the country to be a removal concern country.

(7) The Minister must comply with subsection (6) within 2 sitting days of each House of the Parliament after the day on which the designation is made.

(8) **A failure to comply with subsection (6) or (7) does not affect the validity** of the designation.

199G Visa applications by certain nationals of a removal concern country

(8) **The Minister does not have a duty to consider whether to exercise the power** under subsection (4) or (6) in respect of any non-citizen, whether the Minister is requested to do so by the non-citizen or by any other person, or in any other circumstances.

Summary

We urge the Honourable Members of the Senate Legal and Constitutional Affairs Legislation Committee to change all the elements of this Bill that restrict human rights, to be honest about Parliament's aims, transparent in the choice of language, and sincere in finding solutions that genuinely help people in need, so that people who are now suffering from unjust treatment are protected from being treated more unjustly in the future.

In short, the amendments to this Bill need to be consistent with international law and conventions, and with the intent and spirit of the Constitution.

Sincerely

Margery Cass

Rockhampton Asylum Seekers Action Group

7th April 2024