



**MULTICULTURAL
AUSTRALIA**
it's who we are

**Migration Amendment (Removal and Other
Measures) Bill 2024**

April 2024



12 April 2024
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Electronic submission: legcon.sen@aph.qld.gov.au

Re: Migration Amendment (Removal and Other measures) Bill 2024

Multicultural Australia thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to respond to the *Migration Amendment (Removals and Other Measures) Bill 2024* (the Bill).

Multicultural Australia expresses concern about the consequences of the Bill for people seeking asylum and refugee protection, and its incompatibility with the rule of law, human rights, procedural fairness, discrimination and many of Australia's obligations under international law.

Multicultural Australia emerged from a community-based social movement to advance multiculturalism and build communities where everyone belongs. Since 1998, we have welcomed tens of thousands of individuals from refugee, asylum seeker, international student and migrant backgrounds and worked with First Nations communities, with the goal of creating a more equitable and prosperous society. Today, we are a multicultural for-purpose organisation and settlement provider with a strong and connected physical presence across Queensland.

We also play our part in influencing the multicultural landscape across Australia. Our journey over the past 25 years has been driven by our commitment to create welcome, promote inclusion and foster belonging for all. We achieve this through client service delivery, community development, advocacy, building cultural capability and community events, working with people, community, business, and government. We are proud of the difference we make.

Given the short timeframes for this Inquiry, we have relied on commentary by experts including, the Human Rights Law Centre and the Kaldor Centre. We note that we have not been able to engage with our community partners or invite community members for detailed discussion or advice on the proposed Bill. We are also concerned that the lack of consultation with migrant communities means the voices of communities directly impacted by the Bill are not included.

We are particularly concerned that 'blacklisting' entire countries, designating them as removal concern countries has significant social cohesion implications for Australia by creating impetus for and validation of increased harmful public discourse in Australia around migration, with direct negative consequences for multiculturalism in Australia.

Noting the significant concerns currently highlighted around the Bill, we strongly recommend further scrutiny that incorporates direct community voice. Multicultural Australia would be keen to assist the Committee with direct community engagement on this matter.

Sincerely

Christine Castley
CEO, Multicultural Australia

Introduction

Multicultural Australia (MA) notes the concern stemming from this Bill are around its overly broad scope, the risk of *refoulement*, its impact on children and families and unintended consequences of designating a country as a removal concern country¹. Provisions of the Bill suggest this is a significant recasting of our migration regime - for the Minister to direct certain people to take steps to facilitate their removal from Australia, and to prohibit nationals from certain countries from making any valid visa applications to Australia².

Scope of provisions

Commentary around the Bill suggests it is framed in response to last year's High Court ruling ending indefinite detention (*NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*), and pending litigation concerning people not cooperating with efforts to remove from Australia. However, the framing of the Bill suggests it is not limited to this cohort – extending scope to include others that may be living in the Australian community for years (section 199B (1). The Kaldor Centre notes that the provision includes as 'removal pathway non-citizens' - unlawful non-citizens, Bridging (Removal Pending) visa (BVR) holders, Bridging (General) visa (BVE) holder who hold the visa, and any other non-citizens prescribed in the Migration Regulations (which would allow the Minister to designate other cohorts to be added)³.

MA notes concern with the provisions of the proposed section 199B(1)(d), which would allow additional classes of non-citizens to be added through regulations. The Senate Standing Committee for the Scrutiny of Bills has noted that it is unclear on what basis other additional visas may be prescribed for the purposes of paragraph 199B(1)(D), and that, even while noting the explanation provided in the Explanatory Memorandum, the Committee's concerns are heightened that this section is 'applicable to lawful non-citizens who have been granted a visa permitting residence in Australia, who may have lived in Australia lawfully for an extended period and have no certainty or clarity as to when a visa may be subject to a removal pathway direction'⁴.

The proposed sections 199C(1) and (2) grant the Minister broad powers to give 'removal pathway directions' – these can include directions to sign and submit certain documents required for travel, such as a passport, submit an application for a passport/travel related document or a foreign travel document, attend an interview with an official or report in person to an official. Kaldor Centre notes that these powers are not subject to the safeguards necessary to ensure compliance with Australia's obligations under international law – and are also overly broad (potentially extending to directions that are not possible to comply, for example, directing a person to produce a document they do not have)⁵.

Explanatory Memorandum to the Bill notes that it 'strengthens the integrity of the migration

¹ Kaldor Centre Statement on new migration bill <https://www.unsw.edu.au/news/2024/03/Kaldor-Centre-statement-deportation-bill> and Kaldor Centre submission to the current inquiry. See also, Human Rights Law Centre Explainer <https://www.hrlc.org.au/reports-news-commentary/2024/03/26/indefinite-detention>

² *ibid*

³ Kaldor Centre, n.1.

⁴ Senate Standing Committee for the Scrutiny of Bills, Scrutiny Digest 5 of 2024 (27 March 2024), para 1.4. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest

⁵ Kaldor Centre, n.1.

system' by requiring non-citizens on a removal pathway and those who have exhausted all avenues to remain in Australia to cooperate in efforts to ensure their removal. It suggests that as amended, the Act would make it clear that a non-citizen on a removal pathway is expected to voluntarily leave Australia and cooperate with steps taken (under the Act) for the purposes of arranging their removal and not attempt to obstruct or frustrate (this) removal. The Bill includes significant measures with implications for individual rights and liberties, and MA would note its concern that appropriate and adequate safeguards to the proposed measures may not have been considered.

Risk of refoulement

The Kaldor Centre has raised concerns that while the proposed section 199D provides guarantees (preventing the Minister from issuing a removal pathway direction to compel removal of non-citizens to a country with respect to which a protection finding has been made, as well as to those with pending protection visa applications or ongoing court or tribunal proceedings) – it could still result in people with protection needs being forced to return to countries where they may be at risk of persecution or harm.

These risks and concerns have been identified particularly in relation to asylum seekers that may have had their claims assessed through the 'fast-track' process (where there may be doubts around refugees denied protection) as well as for others whose personal circumstances or situation in the home country may have changed since the determination of their protection claim⁶.

MA also notes with concern that the Bill includes amendments to provide that a protection finding can be revisited in relation to a lawful non-citizen who holds a visa as a removal pathway non-citizen. We would echo the commentary around this proposed measure that there is no explanation or justification around this measure – and it also lacks procedural fairness protections for individuals who may have their protection findings overturned (providing no safeguards to allow an individual to respond or comment on the information and evidence being relied upon prior to the decision being made by the Minister).

Designation of removal concern country

MA is deeply concerned that the Bill suggests broad provisions to prohibit visa applications from almost all nationals of certain countries. Amendments in the Bill confer discretionary power on the Minister to impose a travel ban on entire countries, excluding people from entry into Australia on the basis of the nationality on their passport. This move is discriminatory and risks eroding the principles of fairness and equality – critical to our migration system. There is significant commentary on the unfairness of this provision and the economic, diplomatic and security implications it places for Australia.

MA particularly notes that such a move has significant social cohesion implications for Australia. Public discourse around migration in Australia is often not nuanced, considered or inclusive – and 'blacklisting' entire countries, designating them as removal concern countries risks will create impetus for and validation of increased harmful public discourse in Australia and directly impacting persons from diverse national, cultural or linguistic backgrounds who live in Australia. We are also concerned that new visa applications for individuals from a country identified as a removal

⁶ *ibid*

concern country, unfairly penalizes individuals who may genuinely wish to migrate, study, travel or visit Australia.

Other concerns:

MA notes with concern that the Bill confers extensive powers to the Minister to designate the visa ban or “removal concern countries’ with no real checks and balances, no transparency and no safeguards.

The effect of the provisions in the Bill is that it could increase the use of indefinite detention of certain people – allowing people that genuinely fear harm, or those unable or unfit to cooperate with their removal, to be imprisoned for up to five years, and then presumably returned to detention⁷.

Other concerns noted with the Bill include impacts on children and risks to separation of families. The Minister can require an individual to comply with a (removal) direction - irrespective of any impact it may have on their spouse, children or family⁸ who may be Australian citizens. The broad framing of the Bill prevents almost all people from designated countries from applying for any visa to Australia (posing risks to family separation or jeopardising any effort to family formation/reunion).

The Kaldor Centre provides a detailed consideration of the significant risk placed by this Bill and its potential harmful and unlawful impact on children and families. It notes that while the proposed section 199D(4) would prevent the Minister from directly issuing a removal pathway direction to a child, the proposed section 199D(5) authorises the Minister to issue a direction to any parent or guardian who is a removal pathway noncitizen in relation to their child or children. MA concurs with Kaldor Centre that the Bill in its current form contravenes the most fundamental principles underpinning the protection of children’s rights under international law – namely, the ‘best interests’ principle, as well as the ‘right to be heard’ principle⁹.

Concluding statement:

Multicultural Australia strongly recommends the Committee note the concerns raised in this submission (as well as almost all submissions provided to the current inquiry). This is a significant change to our migration regime and MA is concerned that it risks harming the fundamental principles that need to underpin this system. We have always held a strong belief that our migration system should retain commitments to human rights broadly and particularly to the protection for refugees – including, their rights to family formation. Our migration processes should be fair, provide all applicants with access to natural justice, support migrants already in Australia – and equally, work to promote social cohesion. MA is concerned that the current Bill risks these foundational assumptions.

⁷ See Human Rights Law Centre Explainer, n.1

⁸ *Ibid.*

⁹ Kaldor Centre, n.1