

Labor for Refugees



New South Wales/A.C.T.

www.labor4refugees.com

Convenors:
Shane Prince SC
Jenny Haines

Secretary:
Nizza Siano

10 April 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
legcon.sen@aph.gov.au

Dear Secretary

Migration Amendment (Removals and Other Measures) Bill 2024

Labor for Refugees NSW/ACT appreciates the opportunity to make a submission on the *Migration Amendment (Removals and Other Measures) Bill 2024* (the Removal Bill). We are a community who have worked for many years to improve policy on refugees and asylum seekers. Further details about us can be found here - <http://www.labor4refugees.com/>.

In the short time available we are not confident that we have found all the flaws in the Bill but we are aware of many. Examples of flaws are those stated in the government's Explanatory Memorandum at pages 26 and 27, in the section called 'Statement of Compatibility with Human Rights', written by the Commonwealth Attorney-General's Department as required by the *Human Rights (Parliamentary Scrutiny) Act 2011*. Flaws have also been found by the Senate Standing Committee for Scrutiny of Bills in their unanimous tri-partisan interim scrutiny report on the Bill, dated 27 March 2024, in their Scrutiny Digest No 5 for 2024¹.

The Law Council of Australia has raised the following serious rule of law and human rights concerns about the Migration Amendment (Removal and Other Measures) Bill 2024:

- consultation and transparency are lacking;
- the law-making is rushed;
- its apparent use to pre-empt a High Court ruling;
- its removal pathway direction powers, which enable the Minister to require individuals ('removal pathway non-citizens') to take steps to facilitate their removal from Australia. Non-compliance with such a direction is an offence;
- its inclusion of a mandatory minimum sentence for refusing or failing to comply with a 'removal pathway direction' in proposed s 199E(2)
- the proportionality of prescribing a maximum sentence of five years imprisonment for failing to comply with such a direction, noting that the failure may involve relatively minor conduct which is not harmful or dangerous;
- while a reasonable excuse exception applies, it rules out the excuse that the person has a genuine fear of suffering persecution or significant harm if removed to a particular country, is or claims to

¹ https://www.aph.gov.au/-/media/Committees/Senate/committee/scrutiny/scrutiny_digest/2024/d5_24.pdf?la=en&hash=843EA9A61A5B061D3DDCDF5758F64333FEB81CF

- be, a person, in respect of whom Australia has non-refoulement obligations or believes that they would suffer other adverse consequences if required to comply with the direction;
- its conferral of a personal and discretionary power to designate 'removal concern countries' in the national interest under proposed s 199F. This will have a punitive effect on nationals from those countries who are seeking to apply for an Australian visa and would otherwise meet the visa criteria; and
 - the ability to direct parents to act on a child's behalf (199D(5)) – with no legislative safeguards for consideration of what is in a child's best interest being taken into account other than considering that they can remove a family unit together.

Labor for Refugees NSW/ACT shares these concerns. In addition, we are concerned that in some respects the proposed legislation would appear to be **in breach of the ALP National Platform 2023** (quoted in bold and italics).

46. Labor opposes mandatory sentencing. This practice does not reduce crime but does undermine the independence of the judiciary, lead to unjust outcomes and is often discriminatory in practice. (ALP National Platform 2023, Chapter 6 Strengthening Australian Democracy, p87)

Where a person has a genuine fear of suffering persecution or significant harm if removed to a particular country, is, or claims to be, a person, in respect of whom Australia has **non-refoulement obligations** or believes that they would suffer other adverse consequences if required to comply with the direction, **Australia must not harm people seeking refuge** (Clause 13, p.134) comes to mind as well as International Law.

17. The assessment and review of protection claims will be underpinned by robust, efficient and transparent processes that ensure fair and consistent outcomes, including access to review which allows for the consideration of additional material, and access to independent advice. The highest priority will be allocated to action the orderly and fair resolution of the backlog of cases subjected to the fast-track assessment process. (P.134) Extending the 'god powers' of the Minister, as proposed in the legislation is inconsistent with this Clause's aim of fair and consistent outcomes. Discretionary powers of the Minister are potentially problematic as the decisions may not be consistent and are not subject to review.

The Foreign Minister has said that the powers given to the Minister will not be used very often and when they are, will be used wisely². But not all Ministers for Immigration are kind and wise; some are the opposite. Governments change also. Social panics with strong racist goals can create political imperatives to issue directions to non-citizens to co-operate for all the wrong reasons. The press will love the show-trials as they will get clicks on media, but innocent individuals will suffer and human rights may be ignored. Is this the highly successful welcoming multi-cultural country the PM says we are?

14. Family reunion for migrants and refugees is important to successful settlement. (p.134)

Blanket bans applied to countries would unfairly discriminate against those seeking to reunite with their families and those trying to flee persecution and seek asylum.

16. A fundamental principle in treating those seeking protection with humanity is to provide as much certainty as possible. An aspiration of certainty in all matters around people seeking asylum, including the duration of assessing refugees' claims, must underpin Australian policy. (p.134). Some of the people the Government seeks the authority to deport have been in Australia for a long time. The system was overwhelmed in the last decade, most particularly as a result of people coming by air and seeking asylum (mostly unsuccessfully). The longer people have been in Australia the harder it is for them to leave because they have established connections. Therefore, serious consideration must be given to the effects of lack of timeliness in these cases. Where the dubious fast-track process was used to assess claims, those claims should be reconsidered.

It has been suggested that the main purpose of the legislation is to cover the situation of Iranian men who do not want to return to Iran or are not allowed to return by their government.

Smart Traveller advises Australians not to travel to Iran because of the danger³. Surely we would not want to send people back to countries that are dangerous? We understand that Canada allows people to stay with

² <https://www.theguardian.com/australia-news/2024/mar/31/penny-wong-blames-peter-dutton-adam-bandt-alliance-for-failure-to-pass-labors-deportation-laws>

³ The Resolutions of the 2023 Conference include:

work and study rights until such time as their home country is safe and allows them to return. So, we could either follow that kind of example or return to the practices of the Department of Immigration prior to 2013.

Peak bodies and civil society expert lawyers have written articles⁴ with strong critiques of the Bill which, to us, make clear that the Bill is probably a case of huge over-reach in addressing a 'problem' which is unclear in its scope and apparently not urgent but merely a 'tool' according to the Secretary and legal people of the Department of Home Affairs. As a 'tool', if used, it seems it cannot be assumed to be valid and will be tested in the courts.

Can this really be the best way to respond to the fact that there may be as few as 170 to 1000 people in Australia who do/will not have visas and who thus far cannot be persuaded to leave⁵ and who cannot be *lawfully* detained? How was this issue dealt with in the past and how is it dealt with by countries which respect international law and human rights?

If the Committee considers it must report by 7 May 2024, then we recommend that the report says that the Bill should be taken off the Senate's Bills list until the Scrutiny Committee final report is available, and until the government is given time to articulate exactly what social or other problem the Bill is intended to address and how bad that problem actually is in the bigger picture of many migration system problems that Ministers refer to frequently. If they then think an amendment of the Migration Act is needed to address that problem, we need to know how the Bill actually addresses it and whether it is legally sound.

In the meantime, Labor for Refugees opposes the passage of the Bill and urges all parties and Independents in the Parliament, to take the referral of this Bill to this Committee, as an opportunity to avoid enacting a Bill which is an example of law-making on the run and will do more harm than good.

Yours sincerely

Nizza Siano
Secretary

Solidarity with the people of Iran

That the Conference:

- 1. Stands in solidarity with the people of Iran;***
- 2. Condemns the Iranian regime's abhorrent human rights violations and its destabilising and threatening activity internationally;***
- 3. Is deeply concerned by Iran's brutal repression and execution of protesters and its ongoing and systematic discrimination against women and minorities;***
- 4. Condemns foreign interference by the Iranian regime and reaffirms its solidarity with the Australian-Iranian community and our commitment to protect their freedoms; and***
- 5. Calls on the Australian Government to advocate for the human rights of the Iranian people and to continue to take deliberate and strategic action, including through diplomatic pressure and sanctions, to hold Iran to account for its actions. (P.169)***

⁴ See for example, media releases and articles by the [Law Council of Australia](#), the [Refugee Council of Australia](#), the [Human Rights Law Centre](#), the [Kaldor Centre](#) for International Refugee Law.

⁵ <https://www.theguardian.com/australia-news/2024/mar/26/immigration-detainees-face-jail-time-if-they-refuse-to-co-operate-in-deportation-from-australia> - '... the crossbench was told "less than 1,000" in total'.