



Settlement
Council
of Australia

12 April 2024

Migration Amendment (Removal and Other Measures) Bill 2024: Australian Settlement Sector submission

Dear Committee,

The Settlement Council of Australia (SCOA) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee on the Migration Amendment (Removals and Other Measures) Bill 2024 (the Bill).

SCOA is the peak body representing Australia's migrant and refugee services and allied organisations. SCOA provides leadership to the settlement sector and broader society to enable people of migrant and refugee backgrounds to experience positive settlement outcomes. SCOA represents over 120 member organisations nationally, all working towards a shared vision for an Australia where all people of migrant and refugee backgrounds belong, thrive and experience fulfilling lives.

SCOA's primary concerns with the Bill are that its powers are excessively far reaching, giving rise to many serious unintended consequences as a result, and that the introduction of a 'travel ban' power has serious implications for Australian citizens, permanent residents, and migrant and refugee communities more broadly.

Migration Amendment (Removal and Other Measures) Bill 2024

On 26 March 2024, the Government introduced the Bill which would grant the Minister for Immigration enhanced authority to compel individuals to cooperate with their expulsion from Australia. Additionally, the Bill empowers the Minister to prohibit entry into Australia for individuals from specific nations.

The Bill introduces changes to the Migration Act aimed at "strengthening" the procedures concerning the "removal from Australia of certain non-citizens who are on a removal pathway", as stated in the explanatory memorandum. Under the legislation, individuals who fail to cooperate with deportation efforts would face a mandatory minimum prison sentence of one year. Additionally, they could incur penalties of up to five years imprisonment and a fine of \$93,000.

The Bill is directed to persons who are subject to removal from Australia as soon as reasonably practicable, including current and future holders of a Bridging Visa R (BVR) and certain holders of a Bridging Visa E (BVE). It includes people who have been found to engage Australia's protection obligations, such as refugees, but who are now on a removal pathway following the cancellation of a protection visa on character or security grounds and

who have, in most cases, completed merits review and judicial review of those decisions. The Bill designates this group as “removal pathway non-citizens”.¹

A claim of “genuine fear of suffering persecution or significant harm” would not serve as a “reasonable excuse” to avoid criminal prosecution. A “reasonable excuse” also excludes those who fall under Australia’s non-refoulement obligations.

Potential impacts of the legislation on refugees and migrants in Australia

Since the bill was tabled, many refugees, asylum seekers and community organisations have expressed concerns that the proposed legislation would have wide-ranging harmful effects on individuals and families.

Initially, these laws would target individuals in immigration detention holding a Bridging Visa R. However, concerns arise regarding their potential application to approximately 9,000 asylum seekers on bridging visas who were denied refugee status under the 2014 Coalition government’s “fast-track” process.²

The government says its priority is not on those with bridging visas who are living and working in the community. Instead, it is focused on about 150 highly difficult cases of individuals who are being held in immigration detention. However, the bill would still give the minister, or any future minister, sweeping new powers over the bridging visa cohort.³

Although there are limited protections for some refugees in the Bill, these protections do not go far enough and refugees will be at **risk of harm and family separation** because of this Bill. The Bill also gives the Minister for Immigration new powers to overturn a person’s “protection finding” and remove someone who was previously found to be a refugee.

The proposed law would give the Minister sweeping power to designate a country as a “removal concern country” and ban visa applications from it. The Bill does not mention any country; however, as per Department officials, potential countries to face the ban include Iran, Iraq, South Sudan, and Russia.⁴

While the visa ban does not apply to people outside Australia who apply for a Refugee and Humanitarian (Class XB) visa, the ban will still prevent refugees (and other people in our community) from reuniting with family in Australia. The entry ban will also prevent refugees from travelling to Australia as holders of other visas granted to them, such as student and visitor visas.⁵ For instance, elderly parents of Australian citizens and permanent residents would not be able to visit their adult children. This would be a blanket **collective punishment** of thousands of people who would have no connection to the alleged offence of certain individuals. The restrictions on travel might also force people to seek irregular routes to Australia, potentially increasing maritime arrivals.

¹ Human Rights Law Centre (26 March 2024), *Explainer: Migration Amendment (Removal and Other Measures) Bill 2024*, <https://tinyurl.com/2s4exjff>; The Parliament of the Commonwealth of Australia (2024), *Migration Amendment (Removal and Other Measures) Bill 2024: Explanatory Memorandum*

² Refugee Council of Australia (27 March 2024), *New legislation puts refugees failed by fast track process at risk*, <https://www.refugeecouncil.org.au/new-legislation-puts-refugees-failed-by-fast-track-process-at-risk/>

³ Tom Crowley (28 March 2024), “Family fears forced return to Iran if Australian government passes new deportation laws”, ABC News, <https://www.abc.net.au/news/2024-03-28/family-fears-forced-return-to-iran-if-government-passes-new-laws/103641324>

⁴ Emma Brancatisano and Sara Tomevska (29 March 2024), “An awful nightmare: Amid a contentious immigration plan, Betia fears for her family”, SBS News, <https://www.sbs.com.au/news/article/betia-fears-for-her-family-amid-contentious-immigration-plan/u4c9v1lhk>

⁵ Asylum Seeker Resource Centre (4 April 2024), *FAQs on deportation and entry ban Bill*, <https://asrc.org.au/2024/04/04/faqs-on-deportation-and-entry-ban-bill/>

The provisions in the Bill will apply to people who have serious and legitimate claims for protection. They risk **non-compliance with Australia's obligations** under the Refugee Convention as well as other international instruments. By empowering the Minister to be able to remove people found to have engaged in Australia's protection obligations, and potentially return them to a context where they may face persecution may put Australia in contravention of its obligations pursuant to the Refugee Convention, to which Australia is a signatory.

SCOA and many other organisations in this space have welcomed the Labour government's positive measures, such as ending the temporary protection policy, committing to expanding the size of Australia's refugee program and investing to make protection visas faster and fairer. However, the Bill reverses the course of these positive developments.

Beyond the legal implications of the Bill, it is pertinent to **consider the social cohesion** impact of measures such as these, which break the trust of thousands of Australians from refugee and migrant backgrounds in the Australian government. This is particularly so given the rushed nature of the Bill which further signals a lack of consideration for the rights of people of migrant and refugee backgrounds.

Therefore, we urge the members of the Senate to reject this Bill in its current form and uphold their commitment to a humane migration system in Australia by also ensuring proper consultation and review is undertaken in relation to the Bill.

I hope the above assists the Committee in its inquiry. Should you wish to discuss these matters further, you can contact me at sandra.elhelw@scoa.org.au or on (02) 6282 8515.

Your sincerely,

Sandra Elhelw
Chief Executive Officer