

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100, Parliament House
Canberra ACT 2600

Submission to the inquiry into and report on
The Migration Amendment (Removal and Other Measures) Bill 2024

Dear Committee Secretary

Amnesty International Bendigo Group welcomes the opportunity to provide a submission to this important inquiry.

Bendigo is a regional area where refugee resettlement is well supported by an active and engaged community. As both private individuals and as a human rights group, Bendigo Amnesty members have personal experience of living with and working alongside people from various refugee backgrounds.

Bendigo Amnesty Group was reassured to see the current government acknowledge the unfairness of the previous government's "Fast Track"¹ process, and we welcomed the decision to abolish it.

One of our concerns is that, under the provisions of this new amendment to the Migration Bill, people whose serious and legitimate claims for protection that were never properly or fairly addressed under the so-called "Fast Track" process, may now face further barriers and penalties.

This Bill would permit the Minister to direct people to take steps to facilitate their removal from Australia, people who include current and future holders of a Bridging "R" visa (BVR), certain holders of a Bridging "E" visa (BVE), and even people who have been found to engage Australia's protection obligations as refugees.

Our second concern is that the Bill also criminalises non-cooperation by a "removal pathway non-citizen". People would be punishable with up to 5 years' imprisonment with a minimum mandatory sentence of 12 months, irrespective of whether the person genuinely fears harm or is even medically unable to cooperate with their removal.

We noted that the offence does not apply if the person has a reasonable excuse.

However, it does not appear to be a reasonable excuse that the person has a genuine fear of suffering persecution or significant harm if removed to a particular country.

And therefore, under this Bill, people who genuinely fear harm, or who are medically unfit to cooperate with their removal, could be imprisoned for up to five years, and then presumably returned to detention.

Yet we know that people cannot be coerced into cooperation simply by prolonging their detention.

We **know** the harm caused by long-term detention.

Our third concern is the extension of ministerial discretion.

The Bill appears to significantly expand the powers of the Minister without adequate safeguards, only requiring the Minister to consult the Prime Minister and the Foreign Minister before designating a country

as a “removal concern country” and imposing a “bar on new visa applications” for people from that country.

The amendments in the Bill also confer a discretionary personal power on the Minister to designate a country as a removal concern country, by legislative instrument, if the Minister thinks it is in the national interest to do so.²

Under the Bill, the Minister could therefore unilaterally - subject only to consultation with the Prime Minister and Minister for Foreign Affairs - designate a country to be a “removal concern country”, with the effect that any nationals from that country would be prohibited from applying for a visa to come to Australia.

The broad prohibition on visa applications for almost all nationals of certain countries may stop refugees from entering Australia, contrary to our international obligations, even if they are fleeing conflict and war.

This is a dangerous extension of the Minister’s broad suite of “god-like” powers.

Bendigo Amnesty thank you for the opportunity to make this submission.

Yours sincerely

Jan Govett, Convener, Amnesty International Bendigo Group

¹ Australian Human Rights Commission. Lives on hold: Refugees and asylum seekers in the ‘Legacy Caseload’, 2019.

In its report the AHRC stated that the refugee status determination process for people in the Legacy Caseload - in particular, the so-called ‘fast track’ merits review process - did not provide adequate safeguards against refoulement.

The United Nation High Commission for Refugees also expressed concerns that the ‘Fast Track’ review process lacked procedural safeguards, thereby denying asylum seekers a fair and efficient protection assessment process.

The UNHCR criticised the Fast Track process for denying asylum seekers the right to appear in person and address any negative credibility issues affecting their application.

The process was criticised for imposing shorter timeframes for determination and a limited form of merits review - indeed, many asylum seekers were denied a merits review altogether, a move which the Australian Parliamentary Joint Committee on Human Rights noted “is incompatible with Australia’s obligations on non-refoulement”.

Ultimately, the process lacked the appropriate safeguards and flexibility to ensure that those persons in need of international protection were fairly and accurately assessed and identified.

² Migration Amendment (Removal and Other Measures) Bill 2024: Explanatory Memorandum