Human Rights for All

ABN: 62615699771

www.facebook.com/humanrights4allaus

https://twitter.com/HumanRights4A

Committee Secretary
Senate Legal and Constitutional Affairs Committee

Via email: legcon.sen@aph.gov.au

9 April 2024

Migration Amendment (Removals and Other Measures) Bill 2024

Submission to Senate Legal and Constitutional Affairs Committee

Dear Committee Secretary

1. I am the Director Principal and owner of Human Rights for All (**HR4A**). HR4A is a private legal charity with DGR status. We provide pro bono legal representation to asylum seekers, refugees and stateless people in Australia's immigration prisons. HR4A also assists vulnerable Afghans, Palestinians and others seek safety in Australia.

2. I am writing to express strong opposition to the *Migration Amendment (Removal and Other Measures) Bill 2024* (**Bill**) and raise particular areas of concern, based on HR4A's experience representing people in long-term immigration detention since 2016.

3. Our reading of the Bill suggests an unacceptable over-reach of powers and a dangerous, blanket reaction to complex issues.

Not fit for purpose

4. The inquiry must ask "what is the practical aim of the *Migration Amendment (Removals and Other Measures) Bill* 2024?" The stated aim is "to strengthen the legislative framework in the [Migration] Act relating to the removal from Australia of certain non-citizens who are on a removal pathway." The Bill, as currently drafted, does not achieve this aim.

Fast Track

5. The Fast Track assessment process (administered through the Immigration Assessment Authority (**IAA**)) has been widely criticised since it was introduced in 2015, impacting tens of thousands of people. Labor criticised the IAA in its 2021 policy platform noting it "does not provide a fair, thorough and robust assessment process for people seeking asylum."[1]

6. While Labor has undertaken to abolish the IAA by July 2024 there has not been adequate review of the failings of the Fast Track assessment process.

7. How the situation of people assessed by the IAA interacts with the Bill must be a significant area of inquiry, as these people may have protection claims which have been poorly assessed or changed due to more up-to-date country information.

Country of Concern - Iran

8. The situation of involuntary returnees to Iran illustrates this point. The vast majority of involuntary returnees to Iran are Arabs, who tend to be from Ahwaz and are Sunni. The

[1] https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf, pg 124, point 16

Iranian Government is majority Persian and Shia. Ahwaz sits on the same rich oil field that Saddam Hussein invaded Kuwait to control. The Iranian Government wants unimpeded access to Ahwaz, without Arab Ahwazis demanding basic human rights (the Iranian Government has a long term strategy of forced migration of Ahwazi out of Ahwaz).[2] [3]

9. The effect of this Bill will be to force Ahwazi Arabs to make passport applications to the Iranian Embassy. These passports will not be granted. We know this because we have assisted Iranians to apply for Iranian passports and we have not received a response, including on applications lodged more than four years ago.

10. For at least the last decade, Australian Government officials (from the Department of Home Affairs (**Department**), Australian Border Force (**ABF**) and other agencies) have on a regular basis (sometimes monthly) physically visited the Iranian Embassy in Canberra to discuss involuntary returnees. After such visits, which have consistently been unsuccessful (as evidenced by the fact that no involuntary returns to Iran have been made for two decades), Government officials write up reports about how they are making progress on this issue. These reports are then used to justify the detention of Iranians and used against such people if and when they challenge their on-going detention in court.

11. If the situation was able to be properly assessed, an Australian Government official might ask the question "Has anyone asked Iran what it thinks about this Bill?" The question barely needs to be asked. Iran doesn't want involuntary returns of any description and has consistently communicated this to the Australian Government. It can only be assumed that Iran continues meeting with Australian Government officials out of diplomatic politeness.

12. Further, through the Bill, Australia risks insulting Iran by potentially banning a huge number of its nationals from being granted an Australian visa. This includes academics, doctors, lawyers, sports people, politicians, students and so on. The inquiry must ask itself what the potential consequences are for Australia and Australians in insulting countries such as Iran. We know is that countries such as Iran engage in, for example, hostage diplomacy. While this may sound like an unlikely risk, it is not impossible.

Country of Concern - South Sudan

13. The Government has identified South Sudan as another potential country of concern. This is highly problematic for the following reasons:

    (a) HR4A client records indicate that Departmental records often list the same individual as Sudanese, South Sudanese and stateless in the same document. This issue has yet to be resolved by the Department, noting that Sudan and South Sudan are separate sovereign nations.

    (b) South Sudan does not have an embassy in Australia. The embassy which deals with Australia is in China, and some of the steps in obtaining a passport requires the applicant to attend in person (for example, to present ID and have certain documents assessed, then passport collection). How are individuals in immigration detention meant to travel to China to obtain these documents?

    (c) Ongoing civil wars and man made environment disasters in Sudan and South Sudan make them some of the most dangerous countries on the planet.

[2] https://jcpa.org/the-forgotten-arabs-of-al-ahwaz/
[3] https://www.arabnews.com/ahwaz#group-section-CHAPTER-3-4lFbkFBIer

14. We note that previously Australia has returned South Sudanese by issuing them with an Australian travel document to travel to Kenya, then sourcing another travel document (presumingly South Sudanese) in Kenya to allow the person to fly to South Sudan and enter the country. Australian officials accompany South Sudanese people to Kenya, but not on the onward flight from Kenya to South Sudan (presumingly because South Sudan is too dangerous to risk Australian Government officials).

Section 199B(1)(d)

15. The broad wording of section 199B(1)(d) is problematic. If the Australian people and the legislature were private contracting parties and the legislation was a contract, no lawyer would advise their client to sign it. This is because the terms of the section are too broad and too unclear. If an example of the issue this section is meant to address can be given, then that should be specifically drafted into the legislation. If an example cannot be given, the section should be removed.

16. Legislation which is effectively a place holder for an unknown future situation is not good legislation and is open to abuse. For example, the Minister could declare a category of visas for people who have been recognised as being owed protection, were granted permanent visas, but have not applied for citizenship after, say, 15 years. The failure to apply for citizenship may be deemed by a future Minister as a decision not to fully embrace "Australian values" (however this may be defined). Such people could then be migrated to the new visa category and that visa deemed to be a visa category caught by section 199B(1)(d) and required to take steps to remove themselves from Australia. This could be the case for people from Liberia, Sierra Leone, Sri Lanka and nations in Central and South America which the Australian Government deems as being safe to return to. Such an approach is contrary to the spirit and purpose of the international protection regime for refugees to provide a permanent place of refuge. This power could easily be abused by Ministers to target specific communities who may be over represented in the interactions with, for example, police.

Change in country situation

17. The vast majority of the people the Bill impacts are those who have been in Australia for more than a decade. The situation in their countries of origin may have dramatically changed since their protection claims were finalised and rejected, even if the applicant went through the more robust Administrative Appeals Tribunal (**AAT**) merit review mechanism, which has natural justice protections, rather than the on the papers IAA review mechanism, which has extremely limited natural justice protections. The Bill provides no accommodation for this.

18. Lifting the statutory bar to invite such people to reapply for a protection visa also does not address this problem. Lodging a protection claim more than a decade after the events in question occurred creates almost insurmountable memory and credibility problems.

19. Potential applicants will have to remember, in detail, events from more than a decade ago – "what time? What was the weather? Who was there? What were they wearing?" and answer in a consistent matter to their answers in their initial arrival interview (just after leaving the boat, if an unauthoritised maritime arrival), protection visa application form and statement and Departmental interview. Then, depending on the regime and their date of arrival, their RRT, AAT, IAA and ART submissions and interviews.

20. From experience, we know that anything which is slightly different to any earlier account will negatively impact the applicant's credibility. Further, people who have been living in migration limbo for a decade or more, especially those long-term detained, commonly suffer

long-term mental health injuries, including depression, anxiety, psychosis and memory issues. Retelling traumatic stories will be, unsurprisingly, re-traumatising. Having to repeat protection claims disregards extensive research that indicates traumatic events can shut down episodic memory and fragment the sequence of events.[4] [5]

Not the solution

21. The proposed Bill attacks the symptoms not the cause of the problem, which is the uncertain migration status of impacted people and their fear of persecution.

22. It is disingenuous to think that such a complex problem can be addressed by hasty, punishment-driven legislation that is open to abuse and puts Australia's commitments to international human rights treaties at risk.

23. The vast majority of this cohort has been in Australia for over a decade and where given the opportunity have worked, paid taxes and contributed to retirement savings funds.

24. The assumption that making things progressively harder will force voluntary return has been disproven by record lengths of time in the 'mental illness factories' of indefinite detention.

25. The Bill is not a solution to the issue of people not returning to their countries of origin.

We oppose the Bill in its entirety

26. HR4A opposes the Bill in its entirety on the grounds that it is pursuing an objective that is poorly-conceived, inhumane and unattainable.

Regards

Alison Battisson
Director and Principal Lawyer
Human Rights For All