

Submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Migration Amendment (Removals and Other Measures) Bill 2024

Amnesty International Australia South Australia/Northern Territory Activism Leadership Committee

08/01/2024

Dear Senate Legal and Constitutional Affairs Committee inquiry,

We welcome the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Migration Amendment (Removals and Other Measures) Bill 2024.

Amnesty International Australia is an independent, global movement that campaigns courageously for human rights for everyone.

We're ordinary people from all walks of life, using our passion and commitment to bring torturers to justice, change oppressive laws and free people imprisoned just for voicing their opinion.

We're independent of any government, political ideology, economic interest or religion to ensure we can speak out on human rights abuses wherever they occur.

We stand for equality, justice, freedom, and human dignity and uphold these values:

- Empowerment – we build people power
- Persistence – we are resolute in pursuit of our goals
- Integrity – we hold ourselves to the highest standards
- Courage – we are fearless in upholding human rights

Everyday we move closer to a world where human rights are enjoyed by all.

The SA/NT ALC helps motivate, coordinate and develop local human rights activism in the region. We mentor and support activists and action groups, and participate in consultations on our vision, campaign priorities and policies. We are at the centre of Amnesty's work promoting human rights and challenging injustice.

We urge the Senate Legal and Constitutional Affairs Committee to recommend the government drops the Migration Amendment (Removals and Other Measures) Bill 2024 and the government does not amend the Migration Act 1958 at this time.

A number of the elements of the Bill risk putting Australia in breach of its international obligations, including; the criminalisation of non-cooperation with removal, punishable with up to 5 years' imprisonment with a mandatory sentence of 12 months; the ability of the Minister to arbitrarily reverse a person's protection finding; and the broad prohibition on any type of visa applications from almost all nationals of certain countries.

Removal concern countries

The Bill gives the Minister the ability to designate countries who do not accept the return of citizens on a non-voluntary basis as 'removal concern countries'. At a practical level, this designation would result in the suspension of almost all visa applications from these countries.

Sadly, this Bill raises the spectre of former US President Donald Trump's "Muslim Ban" policy, targeting a select group of countries in clear violation of Australia's international human rights obligations given the undeniable discrimination based on race, religion, and national origin, as well as the potential devastating impacts of family separation.

Ability to expand impacted visa categories

While the current Bill relates to a group of people on a specific visa-class, the legislation gives this or any future government the ability to expand the visa categories that this legislation would capture and apply the same draconian provisions without the need to pass new legislation through the Parliament.

This could mean that refugees and people seeking asylum who have been detained in offshore detention on PNG and Nauru for nearly 10 years - and who were brought to Australia for urgent medical treatment - may be forced to return to a country where they fear for their safety, or face the prospect of 5 years imprisonment.

Ability to revisit protection findings

The Bill gives a discretionary power to the Minister to reverse a protection finding, which could compel a person seeking asylum to return home under the threat of a criminal penalty, seriously risking Australia's obligations not to refoule someone to a country where they face human rights abuses.

In Australia, Afghans from minority groups were still having their protection claims rejected in the weeks leading up to the return of the Taliban, on the flawed assessment that it was safe for them to return to Kabul. Under this Bill, people in similar circumstances could now face 5 years imprisonment for refusing to return back to a country if similar processes come to the same flawed conclusions.

Fairness of previous protection findings

The current Bill assumes that people who have pursued a protection claim in Australia and have exhausted their legal avenues have had the opportunity to engage in a fair process, but this is not always the case. When in opposition, the Australian Labor Party criticised what is referred to as the 'fast-track process', by which protection claims were reviewed under a different system than is standard, with no right to meaningful review.

Thousands of people seeking asylum rejected under this process, who have been living and working in Australia for more than a decade, have faced limbo and uncertainty. Under this Bill, this same group will be facing the very real prospect that they will be forcibly returned to the country from which they fled, or 5 years imprisonment.

We support alternative measures in the support of refugees and asylum seekers, such as raising the refugee and humanitarian intake, helping more people find a safe place to live, ending offshore detention, and supporting their integration into the Australian community, as seeking asylum is a crucial human right that Australia has committed to uphold.

Our Recommendation: The inquiry recommends the Federal government does not amend the Migration Act 1958.

Yours sincerely,

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