



**Submission from the Forum of Australian
Services for Survivors of Torture and Trauma
to the Senate Legal and Constitutional
Affairs Committee in relation to the
*Migration Amendment (Removal and Other
Measures) Bill 2024***

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The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) appreciates the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee about the *Migration Amendment (Removal and Other Measures) Bill 2024*.

FASSTT is a network of Australia's eight specialist rehabilitation agencies that work with survivors of torture and other trauma experiences, who have come to Australia from overseas. Most clients of FASSTT agencies have come to Australia as refugees or humanitarian entrants or are people seeking asylum.

Over the past decade, FASSTT agencies have provided support to 155,537 people from 119 countries.

FASSTT is aware of and shares the profound concerns about provisions of the Bill that have been expressed by expert legal and other groups and that we believe will be detailed in their submissions to the Committee.ⁱ The provisions of concern relate both to people who do not cooperate to facilitate their removal from Australia, including inadequate protection against returning people to countries where they may be persecuted; and to the designation of countries from which their citizens will be prohibited from making valid visa applications.

The Bill is also the source of considerable anxiety among clients and refugee background communities. This arises with respect to both areas of concern expressed by the legal and other agencies noted above viz: provisions that the Government intends to implement if given the power to do so, such as requiring "removal pathway non-citizens" to comply with directions or be convicted of a crime for which they will be imprisoned; and provisions that are broad in scope and there is no certainty about how they will be applied e.g. designation of "removal concern" countries.

Our submission focuses on two concerns that we share with others: the draconian treatment of people who do not cooperate with their removal from Australia and the impact of not accepting visa applications from all but a very limited range of citizens from "removal concern" countries.

The criminalisation of "removal pathway non-citizens" who do not comply with directions to facilitate their removal from Australia

The penalty for non-compliance with a direction of the Minister is mandatory imprisonment for one year and a maximum of five years imprisonment. While the Bill provides that it is not an offence for a person to comply with a direction if they have a "reasonable excuse", we consider it extraordinarily harsh that the definition of reasonable excuse explicitly excludes a genuine fear of suffering persecution or significant harm if removed to a particular country; or that the person is someone in respect of whom Australia has non-refoulement obligations.

The experience of FASSTT agencies with numerous clients over many years confirms the observation of a former senior departmental official:

Some people, including those in detention, won't cooperate for a whole variety of deep seated reasons – not just bloody mindedness. These include strong subjective fear of returning home (even if those fears can't be objectively justified), no resources and nothing to return home to, connections in Australia, mental illness or, in some cases, inability to make a rational decision after years of incarceration in the Australian detention system.ⁱⁱ

Many FASSTT clients have been subjected to long and indefinite periods of detention in countries of origin as an aspect of the persecution which led to them becoming refugees; in Nauru and Papua New Guinea under the “offshore processing” policy; and in immigration detention in Australia.ⁱⁱⁱ

The experience of FASSTT, supported by a substantial body of research in Australia and internationally, is that arbitrary and prolonged immigration detention is a significant cause of and contributor to mental health problems.^{iv} The provision of mental health services to people in detention may at best ameliorate but not alleviate the harmful consequences of prolonged, indefinite, arbitrary detention.^v

If the Bill is enacted, the Parliament will authorise a regime that may well result in the imprisonment of many people who have been so adversely affected by their experiences in Australia and elsewhere that they are unable to engage effectively in an informed manner.

Furthermore, the heightened distress already being expressed to FASSTT services by community members seeking asylum regarding these provisions, also indicates the concerning potential for this Bill to compound the severe anxiety that is a common presentation amongst these community members due to their past traumatic experiences and prolonged visa uncertainty.

Designation of “removal concern” countries

For refugees, a particularly distressing aspect of being forced to flee their countries is separation from their family and friends and others with whom they have close relationships.

This may be alleviated to an extent in the case of certain close family members (inclusive of extended family and kin groups) if they are able and willing to be reunited with people settled in Australia or obtain visas to visit.

The *Migration Amendment (Removal and Other Measures) Bill 2024* proposes to significantly reduce the possibility for refugees settled in Australia reuniting with loved ones by granting the responsible Minister power to designate a country as a “removal concern country” which would prevent all but a small number of cohorts applying for visas to visit.

Those who would be excluded from applying for visas to visit family members include siblings, parents of adult children and grandparents. The responsible Minister has power to allow someone to apply for a visa but is not under a duty to consider applications to do so or to explain why they have declined a request.

Community members with whom FASSTT agencies are in contact are alarmed by the prospect of being permanently separated from many family members and others with whom they are closely connected.

The specialist experience of FASSTT agencies is that permanent separation from family and removal of reunion options contributes to adverse mental health outcomes, including increasing the risk of lowered mood, anxiety and traumatic grief, while also hindering recovery from refugee related torture and trauma.

Conclusion

FASSTT considers that the Commonwealth Government has not provided compelling reasons for proposing exceptional measures that are likely to have profoundly adverse impacts on people who are affected directly as well as on their family members and communities.

Our apprehension about the Bill is heightened by the inordinately short time that has been allowed for the Parliament and community to review the proposals and consider alternative approaches. In this regard, we note that the Senate Standing Committee for the Scrutiny of Bills has expressed “with concern the speed with which this bill is anticipated to pass the Parliament.”^{vi}

1.28 The committee notes that the timeline for the passage of the bill...impacts on the ability of this committee to undertake its usual scrutiny process, including to engage in meaningful dialogue with the Executive in order to address any possible concerns.

1.29 The committee is of the view that truncated parliamentary processes by their nature limited parliamentary scrutiny and debate. This is of particular in relation to bills that may seriously impact on personal rights and liberties.

This bill certainly does seriously impact on personal rights and liberties.

FASSTT requests the Committee to recommend that the Senate does not approve passage of the *Migration Amendment (Removal and Other Measures) Bill 2024*.

ⁱ Refugee Council of Australia, 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/> ; Asylum Seeker Resource Centre, Human Rights Law Centre and Democracy in Colour, “Albanese Government’s punitive proposal will endanger people’s lives” <https://www.hrlc.org.au/news/2024/03/26/punitive-laws>; Kaldor Centre statement on new migration bill, <https://www.unsw.edu.au/news/2024/03/Kaldor-Centre-statement-deportation-bill>

ⁱⁱ Peter Hughes, “Sledgehammer immigration removal legislation,” *Pearls and Irritations*, April 3, 2024.

ⁱⁱⁱ Some also were imprisoned for periods following conviction for criminal offences.

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- ^{iv} *Australian research*: Coffey et al, The meaning and mental health consequences of long-term immigration detention for people seeking asylum Soc Sci Med, Jun; 70(12):2070-2079, doi: 10.1016/j.socscimed.2010.02.042. Epub 2010 Mar 20; K Hedrick et al Self-harm among asylum seekers in Australian onshore immigration detention: how incidence rates vary by held detention type BMC Public Health, 2020 Apr 30;20(1):592, doi: 10.1186/s12889-020-08717-2; P Young and M Gordon Mental health screening in immigration detention: A fresh look at Australian government data Australas Psychiatry, 2016 Feb; 24(1):19-22. doi: 10.1177/1039856215624247. Epub 2016 Jan 11; Steel, Z., Momartin, S., Silove, D., Coello, M., Aroche, J., & Tay, K. W. (2011). Two year psychosocial and mental health outcomes for refugees subjected to restrictive or supportive immigration policies. *Social Science & Medicine*, 72(7), 1149-1156, available at: <http://dx.doi.org/10.1016/j.socscimed.2011.02.007>; The health of people in Australian immigration detention centres, <https://www.mja.com.au/journal/2010/192/2/health-people-australian-immigration-detention-centres> - this reports key findings of a study arising from a recommendation of the then Detention Health Advisory Group, consisting of representatives from a key clinical association that independent research be undertaken on the health of people in detention.
- For international reviews of research see*: M von Werthern et al, "The impact of immigration detention on mental health: a systematic review" BMC Psychiatry, 2018 Dec 6; 18(1):382. doi: 10.1186/s12888-018-1945-y; Nickerson A, Liddell B, Asnaani A, Carlsson JM, Fazel M, Knaevelsrud C, et al. Trauma and Mental Health in Forcibly Displaced Populations. *An Int. Soc. Traumatic Stress Stud.* (2017), available at: <https://istss.org/public-resources/istss-briefing-papers/trauma-and-mental-health-in-forcibly-displaced-pop>.
- ^v The Human Rights Committee has rejected the assertion of the Australian Government that the provision of health services effectively addresses the adverse impacts of prolonged arbitrary detention – F.J. et al. v. Australia, No. 2233/2013, UN Human Rights Committee (HRC), 2 May 2016.
- ^{vi} Scrutiny Digest 5 of 2024, page 8.