

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

Refugee Advocacy Network

12 April 2024

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## To: Secretary and Members of the Senate Legal and Constitutional Affairs Committee

We are keen to share our concerns with you as you consider the Migration Amendment (Removals and Other Measures) Bill 2024.

The Refugee Advocacy Network is a network of groups and individuals who are concerned about the treatment of refugees and people seeking asylum in Australia, and in particular the punitive policies which have been adopted by successive governments.

We are shocked at the far-reaching implications of this hastily prepared and ill-considered proposal. We urge the Senate Legal and Constitutional Affairs Committee to recommend that the government abandon the Migration Amendment (Removals and Other Measures) Bill 2024.

Key problems with the proposed legislation include:

1. Failure to honour claims for refugee protection; the Minister would have power to:
  - a. to take away refugee status even where it has previously been granted in a fair and thorough process
  - b. to deny people the right to a fair process to assess their claims for refugee status
2. Allowing people to be deported to countries where they fear they will be persecuted or in danger, including countries from which they have fled to seek refugee status in Australia
3. Criminalisation of failure to comply with administrative requirements – mandatory and excessive penalties are proposed.
4. Unjustifiable restrictions on immigration from particular countries

It is extremely disappointing to see this Bill put forward, as it disregards Australia's non-refoulement obligations under the UN Refugee Convention, and preferences removal over a fair resolution of refugee claims and providing protection for vulnerable people.

The proposed legislation is simply not necessary, as the government already has the power to detain and remove.

### **1. Failure to honour claims for refugee protection; the Minister would be able to:**

- a. *To take away refugee status where it has previously been granted in a fair and thorough process:* This provision is highly problematic, as people who have been granted refugee status should be able to have confidence that they have a secure future in Australia and a pathway to citizenship. Allowing the possibility that refugee status can be revoked will create unnecessary and damaging anxiety for all people who are granted refugee status, and their families. In addition, introducing such

uncertainty will undermine public confidence in Australia's refugee program, compromise our relationship with the UNHCR and damage Australia's international reputation as a refugee receiving country.

*b. To deny people the right to a fair process to assess their claims for refugee status:* It has been widely accepted that the so-called Fast Track process is unfair, and that many people denied refugee status under this assessment process are very likely to have bona fide claims for refugee protection. The Fast Track process was introduced by the Abbott Government to increase the refusal rate for protection claims. The UNHCR found the Fast Track process was unfair and inadequate – see detail below.<sup>1</sup> In opposition Labor identified the process as deeply flawed and unfair<sup>2</sup>. However, under the proposed legislation, there would be no recourse for those unfairly denied protection under the Fast Track process.

**2. Allowing people to be deported to countries where they fear they will be persecuted or in danger**, including countries from which they have fled to seek refugee status in Australia.

This provision is simply cruel, and clearly allows refoulement (the forcible return of refugees or asylum seekers to a country where they are liable to be subjected to persecution). The criminal penalties are designed to coerce people to return 'voluntarily'. However, returns under these circumstances could only rightly be seen as a form of refoulement.

The proposed legislation should be rejected on the basis of not being compliant with our obligations to provide protection where a person has a well-founded fear of persecution.

**3. Criminalisation of failure to comply with administrative requirements – mandatory and excessive penalties are proposed.**

If this legislation is passed, refugees and people seeking asylum will be punished for not cooperating with a deportation process even where they have reason to fear they would be deported to danger. This will result in refugees, people who exercise their right to seek asylum, including people who are stateless being imprisoned, potentially indefinitely, either in immigration detention or in prison.

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<sup>1</sup> See UNHCR Refugee Agency, Fact Sheet on the Protection of Australia's So-Called "Legacy Caseload" Asylum Seekers, 1 February 2018. *The UNHCR expressed concerns that the fast track review process lacked procedural safeguards, thereby denying asylum seekers a fair and efficient protection assessment process. The UNHCR also 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 also 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.*

<sup>2</sup> Australian Labor Party, ALP National Platform 2021 as adopted at the 2021 Special Platform Conference, <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>.

The threat of 1-5 years in prison is coercive and extremely heavy handed. It echoes the oppressive regimes from which people have fled to seek safety in Australia and is entirely inappropriate in Australia's liberal democracy.

#### **4. Unjustifiable restrictions on immigration from particular countries**

The proposed legislation is punitive and abrogates our responsibilities towards people seeking our protection. This is unacceptable.

The absolute overreach of the Bill is illustrated in the provision for the Minister to personally designate a country as a "removal concern country". It is proposed that it could be 'in the national interest' to prevent immigration from certain countries because they refuse to accept the return of citizens on a non-voluntary basis - people who have not been granted refugee status in Australia (or have had their refugee status revoked).

If adopted, this provision could result in the suspension of almost all visa applications from these countries. The disruption to Australia's immigration program could be dramatic, as migrant families across Australia, including those from refugee backgrounds, would be denied the prospect of family members being able to migrate to Australia. Our reputation as a country with a fair and reasonable approach to migration would be shattered.

**We believe the Migration Amendment (Removals and Other Measures) Bill 2024 is poorly conceived and should not be progressed.**

The proposed legislation has been rushed together without due regard to the many negative impacts for individuals, and for our community more broadly. It is premised in the idea that refugees and people seeking asylum are a problem. Rather than the proposed punitive approaches, we need well considered and fair policies and processes to ensure that vulnerable people are treated with dignity, and that we fulfil our obligations under the UN Refugee Convention.

Yours sincerely

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