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To: Committee Secretariat
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

By email LegCon.Sen@aph.gov.au

Re: Migration Amendment (Removal and other Measures) Bill 2024

ICJ GENEVA

President

Prof. Robert Goldman, USA

Secretary-General

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Australian Commissioners

The Hon John O'Meally AM RFD

Dr Elizabeth Biok

ICJ (AUSTRALIAN SECTION)

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Supreme Court of Victoria

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The Hon Justice Lesley Taylor

Supreme Court of Victoria

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The International Commission of Jurists (ICJ), founded in 1952, has as its mandate the promotion of the rule of law and the legal protection of human rights throughout the world. As a non-governmental organization, it has many national sections and affiliates in all regions of the world, each of which adheres to the ICJ mandate.

The Australian Section of the International Commission of Jurists (ICJ(AS)) has branches in Australia. The ICJ(AS) has long been engaged with immigration law and has advocated for refugee rights across the Asia Pacific region. An ICJ(AS) representative regularly attends the Department of Home Affairs - NGO Dialogue on Refugee and Humanitarian Issues.

The Migration Amendment (Removal and other Measures) Bill raises many grave concerns about the rule of law, human rights and procedural fairness. It is potentially incompatible with Australia's obligations under the Refugee Convention and with human rights instruments to which Australia is a party, such as the International Covenant on Civil and Political Rights (eg, articles 6,7,9, 14, 17 and 26) and the Convention on the Rights of the Child.

The ICJ(AS) has the following concerns about the Minister's power under s199C(1) to order a 'removal pathway non-citizen' to obey a 'removal pathway direction' to undertake actions to facilitate departure.

- The definition of 'removal pathway non-citizen' under s199B is too broad. The aim of the legislation is to force non-citizens to commence the removal process, yet the class, as defined, covers non-citizens with valid grounds to remain in Australia.
- The 'removal pathway direction' may lack a legitimate purpose, be a 'fishing exercise' or be a deterrence measure since the Minister may make the order to determine the 'real prospect of removal'.
- Australia will be in breach of its international obligations under art 33 of the Refugee Convention by ordering a non-citizen to apply for a passport from his/her national state. A refugee may be considered as re-availing himself/herself of the protection of the persecuting state by applying for a passport.
- Ss199B and 199D create uncertainty about the effect of the Bill on non-citizens who are the subject of refugee protection findings. Australia's *non-refoulement* obligations do not permit a non-citizen to be removed to a persecuting state, yet s199B(2) permits a 'removal pathway direction' to be given to a non-citizen for whom a protection finding has been made.
- The Statement of Compatibility with Human Rights (attached to the Explanatory Memorandum) states that the Bill would allow '... a protection finding to be revisited for a limited cohort of persons.' Does the Bill permit the Minister to reverse protection findings? The ICJ(AS) considers that protection findings should not be reopened, especially if the reconsideration is authorized by the Minister's discretionary power and without the opportunity for merits review.
- Refusing or failing to comply with 'a removal pathway direction is an offence, carrying a mandatory minimum sentence of twelve months and a possible sentence of 5 years imprisonment. This applies even if the person has a genuine fear of suffering persecution or significant harm if removed to a particular country, as this is not accepted as a reasonable excuse; nor is it an excuse if that person is, or claims to be, a person in respect of whom Australia has *non-refoulement* obligations. We submit that it is unacceptable and a denial of human rights.
- Another serious concern is that a 'removal pathway direction' may impose obligations on a parent to act in ways which may be incompatible with the best interests of their child.

We submit that the 'removal pathway direction' proposal is unacceptable and a denial of human rights.

In addition to those concerns about the Bill, there is also the attempt in this legislation to give the Minister power to prevent virtually the whole population of a State from securing a visa to visit Australia because their government, which may be an authoritarian regime, will not accept the return of people Australia wants to remove from our shores. This is discriminatory in nature and can do nothing but harm to international relations.

Under s199F, the Minister may designate a country as a 'removal concern state' if s/he considers this to be in Australia's national interest. This is the personal power of the Minister and the rules of procedural fairness do not apply.

Designation as a 'removal concern country' creates a bar for that country's citizens to lodge valid visa applications to Australia. This bar applies to all visa applications (even including, for example, an application by a senior academic to attend an international conference).

The provision creates a discriminatory visa application process. It envisages that all citizens of a 'removal concern country' will aim to remain in Australia unlawfully, no matter which visa they are applying for.

The attempt to rush the Bill through Parliament without proper consultation and scrutiny must be abandoned and a proper process of consultation and consideration undertaken.

ICJ(AS) representatives would be pleased to discuss these matters with members of the Senate Legal and Constitutional Affairs Committee.

Nicholas Cowdery AO KC

President