

**Justice for
Refugees SA**



Submission to

Senate Legal and Constitutional Affairs Committee

**Inquiry into the
Migration Amendment (Removals & Other Measures) Bill 2024**

Justice for Refugees SA Inc.

11 April 2024

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Justice for Refugees SA Inc. (Justice for Refugees SA) is a non-partisan South Australian community organisation working for the just and humane treatment of people seeking asylum in Australia and those who come to Australia as refugees building on Australian traditions of generosity, openness and fairness.

Our members come from a diverse range of backgrounds and occupations, community organisations and welfare groups, united by the quest for justice for refugees.

Justice for Refugees SA wishes to make it clear to the Committee that we oppose the Migration Amendment (Removals and Other Measures) Bill 2024 (the Bill) in its entirety.

Many of our individual and organisational members have been deeply involved in providing practical assistance to asylum seekers and refugees over many years. We are concerned that the Bill will have the effect of punishing and criminalising refugees and people who have come to our country seeking asylum and protection.

We note that the Bill is the latest in a series of rushed and heavy-handed responses by the Australian government to the High Court ruling in *NZYQ*, and it is timely for the Senate Legal and Constitutional Affairs Committee to provide proper scrutiny to the Bill and its potential impact.

We are concerned that the Bill would create a legal framework that allows the Immigration Minister to direct asylum seekers and refugees – under threat of imprisonment – to return to countries where they may have a well-founded fear of persecution or death.

We are concerned that the Bill:

- gives the Minister unprecedented, 'god-like' powers
- criminalises asylum seekers and refugees
- risks returning people to harm contrary to our UN Refugee Convention obligations
- will lead to family separation
- will harming social cohesion and panders to fear and racism.

We wish to voice our concerns about the following features of the Bill and its potential impact on thousands of vulnerable individuals, including the risk of returning them to danger.

Giving the Minister unprecedented god-like powers

- This Bill gives the Minister for Immigration unprecedented powers to prevent people from certain countries (that are designated as a 'removal concern country') from entering Australia. The Bill permits the Minister to unilaterally – subject only to consultation with the Prime Minister and Minister for Foreign Affairs – designate a country to be a 'removal concern country', with the effect that almost all nationals from that country are prohibited from applying for any visa to come to Australia. Only the Minister can decide in individual cases to lift that prohibition, however the Minister is under no duty to even consider such a request.

Criminalising Asylum Seekers and Refugees

- The Bill gives the Minister for Immigration powers to direct and compel a 'removal pathway non-citizen' cooperate with their own deportation from Australia, including to:
 - apply for a passport or travel document
 - complete and sign documents to facilitate travel and
 - attend interviews or appointments.
- If they don't cooperate, they can face criminal charges and a mandatory jail sentence of up to five years.
- The people who can be subject to these powers include:
 - people who are in detention
 - people who hold a bridging R visa (BVR) and
 - certain people who hold a bridging E visa (BVE). This will depend on whether the BVE is granted on the basis they are making arrangements to leave Australia.
- BVE holders at risk of being subjected to the Minister's powers, include:
 - people who are seeking ministerial intervention and
 - people who have been transferred from Nauru or Papua New Guinea to Australia.

- Where the Bill criminalises non-compliance, it provides an exception where the person has a reasonable excuse. However, we consider it a fatal flaw in the Bill that it is **not** a reasonable excuse that the person:
 - has a genuine fear of suffering persecution or significant harm if removed to a particular country
 - is, or claims to be, a person in respect of whom Australia has non-refoulement obligations or
 - believes that they would suffer other adverse consequences if required to comply with the direction.

- While the Bill contains a caveat that the Minister cannot direct a person with a 'protection finding' (as defined in the *Migration Act*) to return to the country from which they are owed protection, we are deeply concerned that:
 - this exception does not apply to other refugees such as people who were granted a Humanitarian visa outside Australia
 - this exception does not apply to people seeking asylum who have been subjected to unfair processes and not had their protection claims accurately assessed (such as people subjected to the 'Fast Track' process who were refused a protection visa).

Returning people contrary to UN Refugee Convention obligations

- We are alarmed that passage of the Bill risks returning people to serious harm and persecution. It contains provisions that would breach Australia's freely undertaken obligations under the Refugee Convention and our responsibilities under international law. Under the Bill:
 - new powers in the Bill allow the Minister to overturn a person's protection finding in certain circumstances (which would then permit them to be deported) and provides that refugees can still be deported to third countries where the person does not have a 'protection finding'.
 - there is a high risk that people, including refugees and people who are stateless, will be deported to countries where they face serious harm, including death.
 - the limited exception preventing removal of people 'owed protection findings' does not apply to all refugees, so people granted humanitarian visas could be deported to countries where they face harm.
 - refugees can be deported to third countries, including countries where they have no connection or support network, and will be vulnerable to persecution and harm.

Family separation

- We are concerned that the Bill will result in families being permanently separated and does not consider the best interests of children.
 - The Minister is not required to consider the best interests of children or family separation when compelling someone to cooperate with their deportation from Australia. This means that Australian citizen family members, including children, could be permanently separated from their parents and loved ones.
 - The ban on entry from a 'removal concern country' only includes limited exceptions for certain family members to be included (such as children under 18 years of age). However, adult siblings and children, and broader extended family such as grandparents, are not included and may be permanently separated from their family in Australia.
 - This will have impacts not only on refugee and asylum seeker families, but throughout multicultural Australia, where many Australian citizens and permanent residents have loved ones that live overseas. This Bill has potential to create suffering and distress across the broader Australian community.

Harming social cohesion and pandering to fear and racism

- We are concerned that the Bill will not only criminalise and punish refugees, and risk returning them to serious harm and persecution, but that it will also have a detrimental effect on the broader Australian community.
- The Bill panders to base fear, xenophobia and racism, which have been whipped up by sensationalist media reporting and self-serving populism. Pandering to fear, xenophobia and racism threatens the multicultural fabric of our Australian society and our national values and traditions of generosity, openness and fairness. For these reasons passage of the Bill will further marginalise certain ethnic communities in Australia, jeopardise social cohesion, tarnish our international reputation and strain diplomatic relations with our neighbours.

Senators, we expect the Australian Government to live up to its obligations as a State Party to the 1951 Refugee Convention and to honour the Convention's core principle of non-refoulement, which holds that a refugee should not be returned to a country where they face serious threats to their life or freedom.

At the last election, Australians voted for humane and compassionate policies for refugees and people seeking asylum. We add our voice to the many community,

human rights, trades union and faith groups across Australia calling on our Government and political leaders to move towards the caring, decent country we know Australia can be.

Coming into government in 2022, the newly elected Labor Government promised change. It promised a return to fair and compassionate treatment of refugees. We strongly oppose this legislation, which – if passed – would fly in the face of the promises made by the Government before and since the election.

In the past, the Labor Party has acknowledged that the 'Fast Track' process has not been fair, thorough, or robust. This flawed process has resulted in many people with genuine refugee claims having been denied protection through no fault of their own. Yet there are no protections in this Bill for the very people who were subjected to the flawed Fast Track process. In fact, many people with genuine refugee claims may be doubly penalised – first, by the acknowledged failings in the Fast Track process; second, by the unnecessarily heavy-handed response of this Bill.

Refugees and people seeking asylum have been through enough. After fleeing persecution and risking everything in their journey to safer shores, many have been subjected to cruel, arbitrary and unnecessary treatment from the moment they sought protection in Australia.

We call on the Government and parliament to stop playing politics with these people's lives. It is time to abandon draconian policies that haven't worked in the past. Rather, we should be working to uphold our obligations under the UN Refugee Convention and international law.

We call on Senators to recognise that refugees and people seeking asylum have the right to seek safety from persecution and ensure that they can live with dignity in Australia while their cases are determined.

We urge all Senators to reject the Migration Amendment (Removals and Other Measures) Bill 2024 when it comes to the Senate for consideration.

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