



Refugee Council  
of Australia

16 November 2023

Hon Clare O'Neil  
Minister for Home Affairs  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

The Hon. Andrew Giles MP  
Minister for Immigration, Citizenship and Multicultural Affairs

Dear Ministers

### **Re: Migration Amendment (Bridging Visa Conditions) Bill 2023**

On behalf of the members of the Refugee Council of Australia, I am writing to express concern about the rapid introduction of the Migration Amendment (Bridging Visa Conditions) Bill 2023. While we welcome the release of people from detention following the High Court decision of *NZYQ v. Minister for Immigration, Citizenship and Multicultural Affairs*, we have several concerns with the legislation introduced into Parliament today.

#### **Lack of oversight and review of bridging visa conditions**

The Migration Amendment (Bridging Visa Conditions) Bill 2023 introduces a number of new visa conditions that can be imposed on people being released into the community on Bridging Visa R. These include the use of monitoring devices, curfews, regular reporting, and conditions on work and financial obligations.

While some of these conditions may indeed be justified, proportionate and necessary in certain circumstances, we are concerned that there is no oversight or review of what conditions may be imposed on people released from detention. These conditions can be very invasive and detrimental to a person's life and participation in the community. For example, the requirement to wear a monitoring device such as an ankle bracelet may impact people's ability to find employment and participate in community life. Likewise, curfews may impact a person's ability to work.

Rather than seeking to further punish people who have already served their jail sentences and have also been subject to a lengthy additional period in immigration detention, the Government should adopt policies to support people to reintegrate safely into the community and rebuild their lives. We should be encouraging people to become independent and constructive members of the community rather than imposing conditions that will make it harder for them to do so.

In the absence of any independent oversight, these visa conditions are likely to be imposed indefinitely. People who cannot be removed from Australia and cannot be detained indefinitely are likely to remain in Australia for many years. Unless the Minister decides to grant them another visa, they may remain on a Bridging Visa R for the rest of their lives, potentially with these conditions still imposed. When similar conditions are imposed on Australian citizens released on bail or on parole, the conditions are time-limited and subject to assessment and review by an independent body (such as the courts or the parole board).

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is the national umbrella body  
for refugees, people seeking asylum  
and the organisations and individuals  
who support them • Founded 1981

These strict visa conditions should only be used where it is deemed necessary, proportionate and appropriate, given all other options available to achieve the outcome. Under the current draft of the legislation, the decision to impose such visa conditions rests with an officer of the Department and is not subject to review. This could lead to the arbitrary use of visa conditions, and risks conditions being imposed where they are not justified or necessary.

**We recommend that the Bill be modified to ensure that any visa conditions imposed are subject to regular independent review by a court or another independent body, to ensure that they are necessary, appropriate, proportionate and the least restrictive means to achieve the purpose.**

**The need for a more considered legislative response**

We are also concerned that this legislation has been hastily introduced into Parliament before the full reasons of the High Court in the case of *NZYQ* have been released. It would have been more appropriate to wait to consider the High Court's reasons before preparing a legislative response, especially as the scope and details of what constitutes administrative detention remain unclear. Further, we are concerned that the Government is attempting to pass this legislation without appropriate community consultation.

**We recommend that the Migration Amendment (Bridging Visa Conditions) Bill 2023 be referred to the Senate Legal and Constitutional Affairs Committee and the Parliamentary Joint Standing Committee on Human Rights, in order to ensure appropriate community consultation and consideration of the human rights implications of this Bill.**

We hope you will consider these issues before passing this Bill.

We would be happy to provide further assistance if necessary.

Yours sincerely,

A handwritten signature in black ink that reads "Paul Power". The signature is written in a cursive, flowing style.

Paul Power  
Chief Executive Officer  
Refugee Council of Australia