SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

INQUIRY INTO THE MIGRATION AMENDMENT (REMOVAL AND OTHER MEASURES) BILL 2024

As the national peak body for people from refugee and asylum seeking backgrounds and the organisations and individuals who work with and support them, the Refugee Council of Australia (RCOA) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee on the *Migration Amendment (Removal and Other Measures) Bill 2024.*

RCOA strongly opposes the proposed Bill, its broad discretionary powers, the criminalisation of people seeking asylum and the risks of breaches of Australia's protection obligations under international law. RCOA has listed several areas of immediate and future concern:

1. **The criminalisation of people seeking asylum for refusing to return to their country of origin**
2. **Failures of the Fast Track refugee protection assessment process**
3. **Failure to adhere to Australia's protection obligations under international law**
4. **Dangers of returning to Iran**
5. **Separation of families**
6. **Broad discretionary powers and visa ban**
7. **Wider implications of the visa ban for the economy and the community**
8. **Alternatives to this Bill**

1 Criminalisation of people seeking asylum for refusing to return to their country of origin

1.1 The proposed legislation raises significant concerns regarding the potential for criminalising people from refugee and asylum-seeking backgrounds for non-cooperation with their removal, leading to mandatory imprisonment for those who fear harm upon return to their home countries. The Bill forces individuals to comply with ministerial directives without any safeguards or viable options to seek protection. Failure to comply with such directives can result in criminal charges, with penalties including up to five years in prison, exorbitant fines, and a mandatory minimum sentence of twelve months imprisonment. Charges can be laid for simply refusing to apply for a passport, sign documents to facilitate travel or attend interviews with immigration officials.

1.2 The Bill targets vulnerable individuals who have been denied visas, including protection visas, pushing them towards removal under the threat of imprisonment. It risks indefinite detention for individuals unable to be removed due to legitimate fears of harm or medical conditions that prevent their participation in the removal process. The Bill also extends to thousands of people

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living in the community on bridging visas, who have established their lives in Australia. They have families, jobs, strong communal networks and children born in Australia.[1] A significant number of these individuals have had their claims refused through the flawed 'Fast Track' assessment process.[2] The Fast Track assessment has been criticised in the past by members of the current Government for not providing fair, thorough, or robust assessments for asylum seekers[3], thereby placing thousands at risk of returning to danger or facing years of incarceration.

1.3 The Bill further impedes personal freedoms and civil liberties of people seeking protection. It effectively coerces individuals to engage unwilfully in the process of return or third country resettlement. Such attempts undermine Labor's 2023 National Platform pledge towards people in detention: "Labor believes that all persons in immigration detention should be treated with humanity and respect for the inherent dignity of the human person."[4] Stripping individual rights and freedoms through coercive and punitive measures undermines democratic freedoms and Australia's commitment to upholding international laws and human rights.

1.4 The Bill also allows for potentially **indefinite imprisonment** if a person continues to refuse to cooperate in their return. A person can be convicted for a minimum 12-month sentence. On release, they can be given new directions by the Minister to take steps to facilitate their removal. If they refuse again, new charges can be brought, potentially allowing for further imprisonment. This can continue indefinitely.

1.5 It is also not clear if each direction raises individual criminal charges, each with a mandatory minimum sentence. For example, a person may be given a direction by the Minister to sign an application for a passport and attend an interview. If they refuse both, the Bill potentially allows for two separate charges, each with a mandatory minimum sentence of 12 months. The potential for indefinite imprisonment highlights the arbitrary nature of these new powers.

2 Failures of the Fast Track refugee protection assessment process

2.1 A key reason for our concern with this Bill is the potential of forced return of people who have reasonable fears that they may face persecution on return, due to the failure of the Fast Track process to provide a fair, thorough and robust assessment of a person's claims for protection. The Fast Track process, which the Government acknowledges does "not provide a fair, thorough and robust assessment process for persons seeking asylum,"[5] was established in 2014 via the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* under the then Coalition Government. The Legacy Caseload law created a sub-standard protection assessment process deemed a way to 'fast track' the asylum claims of people who arrived by sea without a prior visa. This Fast Track process has not been fast, as 1,300 people are still waiting for an initial decision on their application more than 6½ years after the final applications were received and more than 11 years after they arrived in Australia. There is also no formal review mechanism available to people to have their claims re-assessed, including for those people coming from places where the country conditions have deteriorated considerably since their initial decision, e.g. Iran, Myanmar, Afghanistan, Sudan, Sri Lanka.

[1] Refugees and people seeking asylum contribute significantly to Australian society. The 740,000+ refugees and humanitarian migrants settled by Australia since Federation have had a profound impact in enhancing the nation's social, cultural and economic life. See Refugee Council of Australia, Economic, civic and social contributions of refugees and humanitarian entrants: A literature review. 2019. https ://www.refugeecouncil.org.au/economic-literature-review/

[2] 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/

[3] 2021 ALP National Platform. https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf

[4] 2023 ALP National Platform. https://www.alp.org.au/media/3569/2023-alp-national-platform.pdf

[5] ALP National Platform: As Adopted at the 2021 Special Platform Conference (March 2021) https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf page 124.

2.2 In 2017, Andrew Giles MP, now Minister for Immigration, raised concerns in Parliament about the Fast Track process, especially in regards to the treatment of Iranian refugees. These concerns continue to be relevant today:

> *I understand that today it is Persian New Year. But for many who celebrate this, including many who I represent in Scullin, it comes at a time of deep anxiety, not of celebration. Under this government's fast-track visa process, established through the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 — legislation I opposed, along with my Labor colleagues — there are approximately 24,500 people across Australia who have sought asylum and who have had to wait for years until invited by the department to lodge their claims. Many of the people in this group are being told to lodge their claims for protection within very short timeframes, with very little access to legal support. If these claims are not lodged within 16 days, asylum seekers are being told that they will not only lose any payments they may receive but lose access to financial hardship payments and vital support services.*
>
> *Given cuts to legal support, there are no funded services for many to help them navigate this complex and traumatic process. This poses many significant difficulties. A settlement worker at Whittlesea Community Connections in my electorate told me this is a difficult and complex question to discuss with many asylum seekers suffering from other traumas. After discussing the case and the prospects with one asylum seeker from Iran, she was told, 'I can't bear to talk about the prospect of returning to Iran if I'm not successful. I die just thinking about it.'*
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> *Of course, this does not just affect asylum seekers from Iran. I have heard about other asylum seekers who have had difficulty completing their forms because they have not had guidance. People who are suffering from PTSD can be very confused about what elements of their stories they have told to whom and for what purpose. I think of the example of the woman in Queensland who forgot to include that she had been raped in her initial application. These are profound failings with a process, and this is not good enough. There is no urgency for these claims to be lodged, although we of course support prompt processing. Many people have been reporting that they have been cut off from social support payments within days of receiving their letters from the department, making it even more difficult for them to access the support that they need to complete these vital applications.*
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> *In matters that so often are of life and death, matters affecting lives that have been in limbo for years, surely the key question here is to get the decisions right and not cause further trauma to people who have already suffered too much. There are of course big disagreements in this parliament when it comes to how we approach meeting our obligations to those who seek asylum in Australia. These debates will continue. I hope that views will change. But here we have a simpler question, which comes down to this: can we not treat human beings with decency and dignity, and give them a fair chance to exercise their rights?*[6]

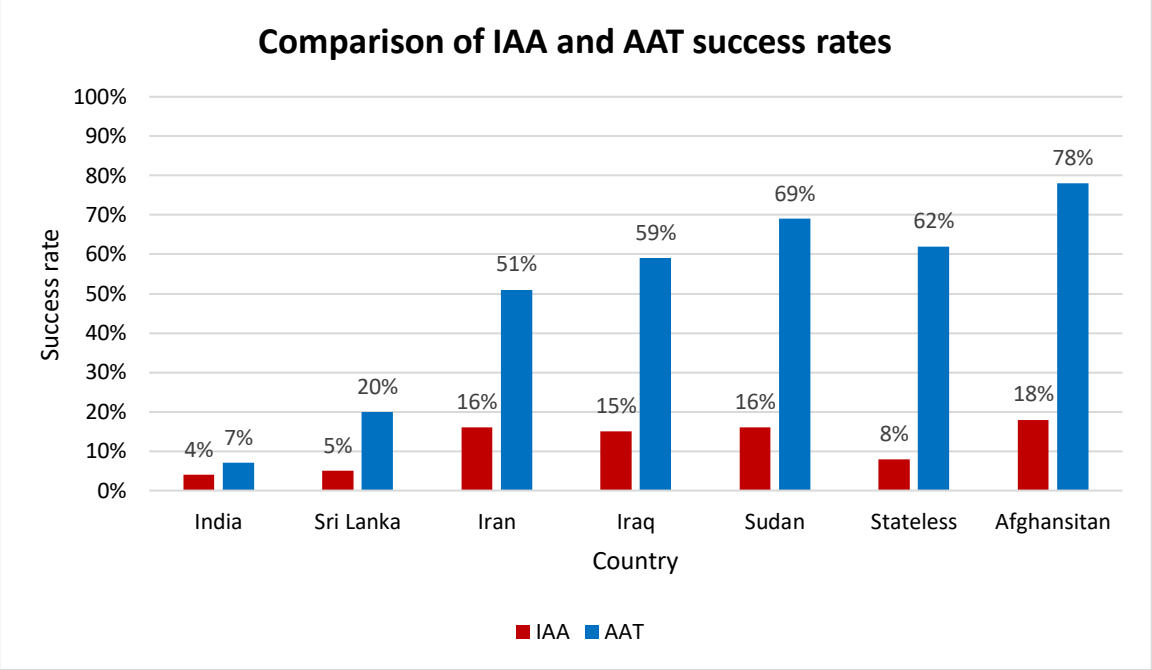
2.3 A key issue with the Fast Track process is that it lacks robustness and has led to poor quality decision-making. The Fast Track process involves an initial review by the Department of Home Affairs and a rudimentary merits review "on the papers" by the Immigration Assessment Authority (IAA). The IAA procedure significantly decreases scrutiny of the Department's decisions. The usual rule with the IAA – unlike the former review body, the Refugee Review Tribunal, and the current Administrative Appeals Tribunal – is that it only reviews the Department's decisions "on the papers" without hearing directly from the people involved. This

[6] Andrew Giles, 'Constituency Statements', House Debates, 21 March 2017, available at https://www.openaustralia.org.au/debates/?id=2017-03-21.121.1&s=fast+track+speaker%3A10812#g121.2

"on the papers" review means that people are unable to present new information to be considered at review. The IAA also can also only consider new information that had not been provided to the Department earlier (for example, late disclosures of sexual assault) in exceptional circumstances. The lack of procedural fairness at the IAA is highlighted by comparing similar reviews at the Administrative Appeals Tribunal (AAT), which hears appeals for protection visa claims for those who originally entered Australia by plane with a valid temporary visa. The AAT has independently appointed members and conducts a fresh review, in person. These procedural elements ensure a fairer assessment of refugee claims compared to the IAA under the Fast Track process.

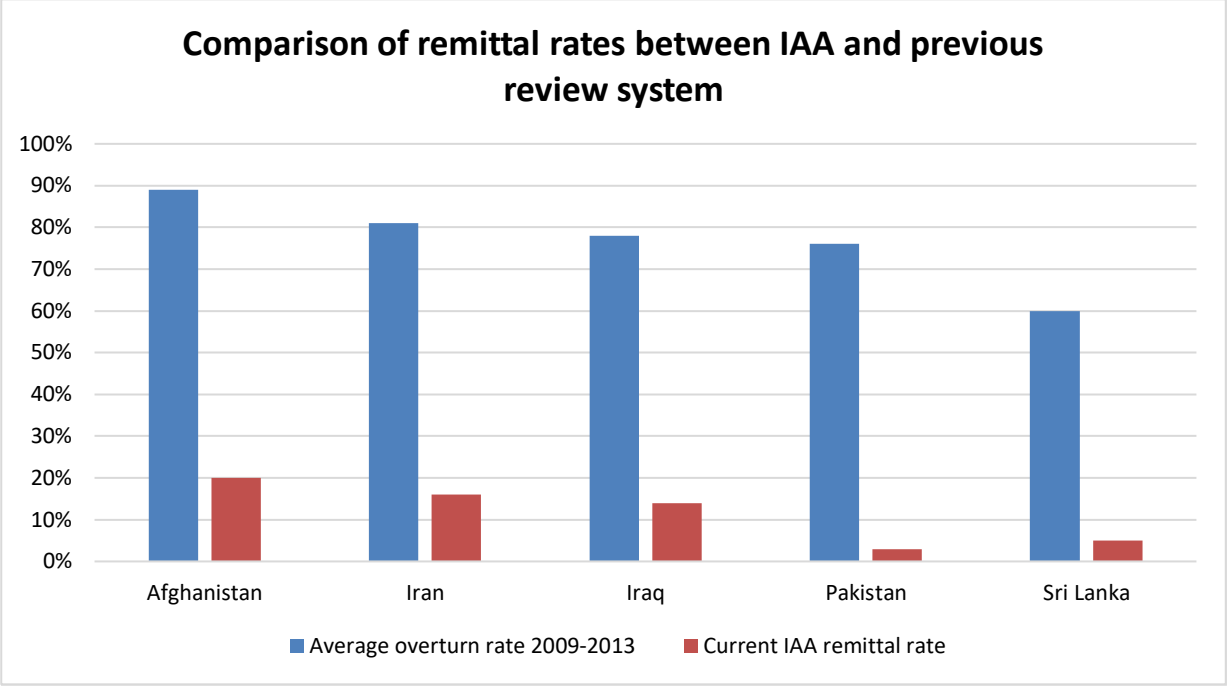
2.4 Due to the lack of procedural fairness at the IAA, it is unsurprising that there is a significant number of refusals at the IAA. In 2019-20, the IAA affirmed the original decision to refuse a visa in 94% of cases.[26] In 2020-21, this figure was 91%.[27] Figure 1 shows the IAA's outcomes by country of origin. Success rates for Iran in the IAA are 16%, compared to 51% for Iranians at the AAT for the same period. There is no reason for the significant discrepancy between IAA and AAT during the same period and same country, other than a clear lack of procedural safeguards at the IAA level.

Figure 1: Comparison of IAA and AAT success rates



2.5 There are also significant discrepancies between the IAA decisions and that of the former review system under the Refugee Review Tribunal, even when comparing asylum claims from refugees from the same country. The IAA's remittal rates can be compared to the last available statistics from the previous review system (for people claiming asylum by boat between 2009 and 2013). These show much higher rates of remittal, ranging from 60-90% for the same nationalities, as shown in Figure 2. These discrepancies cannot be explained by changes in country of origin, as there has been no improvement in conditions in these countries since the former system was abolished.

Figure 2: Comparison of remittal rates between IAA and previous review system[7]



2.6 The Albanese Government has recognised the inherent problems with the IAA component of the Fast Track process and is currently seeking to abolish the IAA via the *Administrative Review Tribunal Bill 2024*, in line with its commitment to improve fairness and efficiency in the asylum process.

2.7 It is clear that the lack of procedural fairness and safeguards under the IAA has led to a higher refusal rate, putting people seeking asylum with genuine refugee claims at risk of being returned to harm. As such, there are strong grounds to believe that those who may be subject to direction orders under this Bill will include people who do have strong claims for protection but have not had a fair process in which to have those claims assessed.

3 Government's failure to adhere to Australia's protection obligations under international law through its non-refoulement obligations

3.1 The Bill states that a 'reasonable excuse exception' applies for a person to not be given a direction. However, the Bill states that it is not a reasonable excuse that a person has a genuine fear of suffering persecution or significant harm if removed to a particular country; or is a person of whom Australia has *non-refoulement* obligations (e.g. someone found to be a refugee). The removal of having a genuine fear of persecution in the Bill represents a direct breach and reversal of Australia's *non-refoulement* obligations and has significant consequences for people seeking protection.

3.2 There is potential that these new powers will be used to send those with strong claims for protection back to the hands of their persecutors. While the Bill provides that these powers will not apply to those who have been found to be refugees by Australia, there is concern that those who do have strong claims, but have not had a fair hearing or review, will be sent back to real harm.

3.3 In contradiction to what the Government claims, section 199E(4)(b) provides that the fact that someone "is [a refugee], or claims to be, a person in respect of whom Australia has non-refoulement obligations" is not a "reasonable excuse" for failing to follow a direction. The

[7] Compiled from IAA and RRT statistics. Available at https://www.refugeecouncil.org.au/fast-tracking-statistics/8/

Government's justification for this is that it is necessary in order to facilitate the removal of individuals to safe third countries.[8] However, as the Kaldor Centre for International Law outlines in their submission, "the wording of the provision does not restrict its application to such situations. As it stands, the fact a person is or may be owed protection obligations with respect to the country to which they are to be removed will not be a reasonable excuse for non-compliance with a direction."

3.4 To put it simply, a person's refugee status and, therefore, fear of return to the country where they face persecution, is not a "reasonable excuse" for not complying with a ministerial direction to return to that place. While the Government claims this is not its intention, the current provisions set out in the Bill would create a situation where this risk becomes law.

4 Dangers of returning to Iran

4.1 Under the new Bill, people who have been subject to the Fast Track process (discussed above) will be forced to return to countries where they fear persecution, torture and death. The Bill comes before a High Court hearing of an Iranian man who is refusing to cooperate with authorities trying to deport him.[9] Known by the pseudonym ASF17, the Iranian man has been held in immigration detention for ten years. He identifies as bisexual and fears he would be harmed by Iranian authorities because of his sexuality.[10] Sexual intercourse between males is illegal in Iran and can result in the death penalty. Amnesty International states that "consensual same-sex sexual relations remained criminalized with punishments ranging from flogging to the death penalty."[11]

4.2 A significant number of Iranian nationals in Australia have undergone the flawed Fast Track assessment. Approximately 3,000 Iranians, including stateless Feyli (Faili) Kurds from Iran, went through the Fast Track process with approximately 2,500 of them being denied protection visas. There are 400 people from Iran who are still awaiting decisions. Country information from the Australian Government and international human rights organisations state Iran's poor human rights record, persecution of minorities, cruel and inhumane treatment of political dissidents, LGBTQI+ activists, women and children.[12] In 2022, the death of 22-year-old woman Mahsa Amini in custody, who was arrested for allegedly not wearing the hijab (headscarf) properly, triggered nation-wide protests.[13] An independent international fact-finding mission has detailed the extent of the Iranian government's crackdown on the protests, including use of arbitrary arrests, enforced disappearances, unfair trials, torture and punishment – including death – of protestors, lawyers, journalists, teachers, students and women's rights defenders. This included the execution of nine young men in December 2022.[14]

4.3 Iran is not a signatory to many international and human rights conventions. DFAT's 2023 Country Information Report on Iran stipulates that Iran is not a party to:

[8] Stephanie Foster, Secretary, Department of Home Affairs. Evidence to Senate Legal and Constitutional Affairs Legislation Committee, Migration Amendment (Removal and Other Measures) Bill 2024 (26 March 2024), 21.
[9] High Court of Australia. Notice of Filing. March 2024. https://www.hcourt.gov.au/assets/cases/07-Perth/p7-2024/ASF17-Cth-App.pdf
[10] High Court of Australia. Notice of Filing. March 2024. https://www.hcourt.gov.au/assets/cases/07-Perth/p7-2024/ASF17-Cth-App.pdf
[11] Amnesty International, Iran, 2022. https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/iran/report-iran/#:~:text=Enforced%20disappearances%2C%20torture%20and%20other,imposed%20and%2For%20carried%20out.
[12] DFAT Country Information Report Iran, 24 July 2023. https://www.dfat.gov.au/sites/default/files/country-information-report-iran.pdf; Amnesty International, Iran, 2022. https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/iran/report-iran/#:~:text=Enforced%20disappearances%2C%20torture%20and%20other,imposed%20and%2For%20carried%20out; Human Rights Watch, Iran Events of 2022. https://www.hrw.org/world-report/2023/country-chapters/iran.
[13] UN News, Iran: Harassment, reprisals continue for Mahsa Amini's family. September 2023. https://news.un.org/en/story/2023/09/1140777
[14] UN General Assembly, Report of the independent international fact-finding mission on the Islamic Republic of Iran. 26 February–5 April 2024. https://documents.un.org/doc/undoc/gen/g24/008/67/pdf/g2400867.pdf?token=f0xQJBYdkbZZ2gnfWP&fe=true.

> *…the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; Optional Protocol of the Convention against Torture; Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty; Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; or the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.*[15]

4.4 A number of families and individuals have gone public about their fears of being forcibly returned to Iran. Refugee and human rights lawyer, Betia Shakiba, wrote in the Guardian: "For my family and many others, this Bill would mean being exposed to prosecution, potentially being sent back to the countries they fled, and facing persecution."[16] Another Iranian family living in Melbourne said they were "terrified" about the new proposed legislation. The family fled Iran in 2012 and arrived in Australia by boat in 2013. Most family members had their refugee claims rejected and were granted bridging visas, while one member was granted protection.[17] The legislation has the potential to split families and cause significant distress on people who have already been subject to grief, loss and trauma through the refugee determination process.

5 Separation of families

5.1 The Bill poses a significant threat to family unity, particularly for those seeking asylum in Australia. One of the most troubling aspects of the Bill is the introduction of new powers for the Minister to direct individuals, including parents or guardians who are "removal pathway non-citizens", to facilitate their removal from Australia. This directive can extend to their children, leading to situations where families are forcibly separated as a result of compliance with the removal process. As the Kaldor Centre for International Law notes in their submission, "the bill contains no other safeguards requiring that the best interests of affected children be considered in any way. As such, the bill fails to give effect to Australia's binding obligations under international law to ensure that the best interests of the child are a primary consideration in any decision concerning the deportation of that child and/or an immediate family member of that child."

5.2 The potential for family separation is further exacerbated by the Bill's broad prohibition on visa applications from nationals of designated "removal concern countries." This restriction severely limits the ability of individuals from these countries to seek safety or opportunity in Australia, barring them from access to study, visitation, or business opportunities, with very few exceptions. Consequently, families may find themselves permanently separated, with some members unable to enter Australia due to the visa ban, while others may already be residing in the country.

6 Broad discretionary powers and visa ban

6.1 The Bill grants the Minister wide and sweeping powers to ban or slow visa processing from designated "removal concern countries". These concerns have been raised in the Senate Standing Committee for the Scrutiny of Bills: "The committee is concerned that such a significant matter is being left to the broad and unfettered discretion of the minister and is to be set out in delegated legislation."[18] Under the proposed legislation, the Minister will be able

[15] DFAT Country Information Report Iran, 24 July 2023. https://www.dfat.gov.au/sites/default/files/country-information-report-iran.pdf
[16] Betia Shakiba, "I am scared - Labor's cruel deportation bill is an attack on my family and countless others like us." 28 March 2024. https://www.theguardian.com/commentisfree/2024/mar/28/labor-deportation-bill-controvery-comment-visas
[17] ABC News. Family fears forced return to Iran if Australian government passes new deportation laws. 28 March 2024. https://www.abc.net.au/news/2024-03-28/family-fears-forced-return-to-iran-if-government-passes-new-laws/103641324
[18] Senate Standing Committee for the Scrutiny of Bills. Scrutiny Digest 5 of 2024. https://www8.austlii.edu.au/au/other/AUSStaCSBSD/2024/67.pdf

to refuse visas to people who otherwise meet all criteria to visit Australia, because they are nationals of a country that refuses to accept forced returns from Australia. The Bill restricts the ability of individuals from these countries to seek opportunity in Australia, barring them from access to study, visitation, or business opportunities, with few exceptions. The Bill also opens the door for the Minister and future governments to prohibit visa applications from refugee-producing countries, such as Afghanistan or Iran. The prohibition of individuals from countries blacklisted undermines Australia's long held "non-discriminatory" immigration policy.[19]

7 Wider implications of the visa ban for the economy and the community

7.1 Further implications of visa bans can result in poor diplomatic and bilateral relations between Australia and banned countries. It has the potential to impact bilateral trade, the education sector, tourism and relationships with international organisations. The Bill has the potential to significantly impact Australian universities, particularly in terms of diversity, financial health, academic collaboration, and reputation. A decrease in the number of international students due to the visa ban could lead to financial challenges for these institutions, potentially affecting their ability to invest in research, facilities, and support services. The visa entry ban will also discourage migrants from coming to Australia to work, live and study, which will have a significant impact on the Australian economy.

The Government undermining its own objectives

7.2 The Government has not addressed the disparity that this visa ban could have on its objectives outlined in relation to complementary migration pathways for people from refugee backgrounds. Complementary pathways are "safe and regulated avenues for persons in need of international protection that provide for a lawful stay in a third country where the international protection needs of the beneficiaries are met".[20] Examples of complementary pathways include labour mobility programs (via skilled visas), education pathways, family reunion and community sponsorship programs. While this Bill outlines exemptions to the visa ban for the Humanitarian Program, it does not take into account people coming through other visa pathways who are from refugee backgrounds. This blunt approach of a visa ban undermines the Government's commitments to increase complementary migration pathways and its current initiatives like the Skilled Refugee Labour Agreement Pilot.[21]

7.3 Domestically, visa bans on refugee-producing countries can have adverse effects on social cohesion. Australia's multicultural and diaspora communities have deep cultural, family and community connections across the world. These communities are often the first to respond to international crises. On 3 April this year, Prime Minister Anthony Albanese emphasised the importance of maintaining social cohesion when speaking about overseas conflicts.[22] Blacklisting countries through punitive unilateral measures risks Australia's global reputation as a refugee settlement country and has the potential to cause friction among Australians, as well as marginalise diaspora and multicultural communities.

Unchecked, unbridled power

7.4 The Bill introduces provisions that could significantly expand the powers of the Minister for Immigration, creating potential for future abuses of authority. A particularly troubling aspect of the Bill is the ability it grants future ministers to designate countries as "removal concern countries", effectively banning visa applications from citizens of those countries. This power is

[19] Department of Home Affairs. Our history - Multicultural affairs. https://www.homeaffairs.gov.au/about-us/our-portfolios/multicultural-affairs/about-multicultural-affairs/our-policy-history; Amnesty International, Rushed Migration Amendment Bill creates spectre of Trump's "Muslim Ban" policy. March 2024, https://www.amnesty.org.au/migration-amendment-2024/.
[20] UNHCR. Complementary pathways for admission to third countries. https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/complementary-pathways-admission-third-3
[21] See https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-agreements/skilled-refugee-labour-agreement-program
[22] Prime Minister of Australia, Transcript - Press Conference, 3 April 2024, https://www.pm.gov.au/media/transcript-press-conference-0

broad and discretionary, allowing for such designations to be made on the basis of what the Minister deems to be in the national interest, without transparent or clearly defined criteria for these decisions. The absence of stringent checks and balances on the exercise of this power raises concerns about its potential misuse, particularly in how geopolitical or domestic political considerations might influence the designation of "removal concern countries". This could lead to arbitrary and discriminatory practices, affecting not only the lives of countless individuals and families, but also Australia's student, skilled and visitor visa regimes.

7.5 Moreover, the Bill empowers a future Minister to expand the classes of visas for individuals deemed to be a "removal pathway non-citizen" through ministerial instruments. This provision opens the door for an extensive expansion of executive power over immigration decisions, enabling future ministers to effectively manipulate visa categories and criteria to suit policy agendas or political motives. Such expansive powers, vested in a single office without sufficient oversight, risk being abused, particularly in ways that may undermine the fairness and integrity of the immigration system. The potential for these powers to be expanded and applied in an arbitrary or politically motivated manner poses significant risks to the rights and freedoms of individuals seeking refuge or migration opportunities in Australia. The lack of safeguards to prevent such abuses represents a departure from democratic principles and the rule of law, underscoring the need for a careful re-evaluation of the Bill's provisions.

7.6 Even if the Government does not intend to use this power, the current Bill would create a law that permits this abuse of power. If a future minister or future Government were to enact a visa ban or direction that is applied in an arbitrary or politically motivated manner, then the responsibility falls not only on that future minister but also on this current Parliament if this legislation is passed.

8 Alternatives to this Bill

8.1 The Refugee Council recognises that returns are part of a well-functioning asylum system. However, the approach taken in this Bill – criminalising non-compliance with administrative tasks – will not result in the outcomes the Australian Government desires. Adversarial, coercive, and a detention or prison-focused system will not facilitate voluntary removals. The more likely scenario is that people will face imprisonment and a further deterioration of their trust in the process and willingness to engage.

8.2 A better approach, and one that the Australian Government had previously been a notable leader in, is providing tailored, individual support to people during and after their immigration process to facilitate their decision-making if they are not found to be refugees or if they no longer hold a visa. This approach was heralded internationally and was known as the Community Care Pilot and subsequent Community Assistance Scheme (and currently Band 5 of the Status Resolution Support Service, SRSS).

8.3 The services available in these programs include intensive case management, accommodation support, access to healthcare and psychological counselling, immigration information and counselling services, and legal assistance via a separate program. This early intervention, tailored approach was first introduced under the Howard Coalition Government in response to recommendations made from the Palmer and Comrie Reports.[23]

8.4 The International Detention Coalition's analysis of the government's data found that this case management pilot with vulnerable migrants achieved a 93% compliance rate. In addition, 60% of those not granted a visa to remain in the country departed independently despite long periods in the country and significant barriers to their return.[24] The then government agreed

[23] See https://www.homeaffairs.gov.au/reports-and-pubs/files/case-management.pdf
[24] International Detention Coalition, 2015, https://idcoalition.org/wp-content/uploads/2024/01/There-Are-Alternatives-2015.pdf

that "[d]rawing on appropriate services and focusing on addressing barriers is proving a successful mix for achieving sustainable immigration outcomes."[25]

8.5 Sadly, while the program still exists, it has not been used properly and it is nearly impossible for people in need to get access to it. For example, last year, only 178 people were on Band 5 of the SRSS Program.[26] A concerted effort to expand eligibility and access to this program and use a positive, tailored approach to repatriation must be considered instead of this disastrous Bill.

8.6 The advantage of this approach would be to examine what the obstacles are for the people that require return. These barriers may include the lack of a fair assessment of the protection claims, worry about their financial situation upon return, or the risk of family separation – and the best interests of the child should form a key consideration. A positive approach is also more likely to counter the oppositional frame of mind that many people have in relation to their interactions with the government: rebuilding trust in order to support people to make clear decisions about their lives will not happen under threat of imprisonment.

8.7 It is also commonly accepted that the longer an asylum seeker stays in the country of asylum, the greater the reluctance to return home if the claim is ultimately unsuccessful.[27] As outlined earlier, the Fast Track process was neither fast nor fair, so people who have been refused under this system both have not had a fair evaluation of their refugee claims and have been in Australia for at least 11 years. The Government's own actions in October 2023 in relation to the separate onshore protection system demonstrate that people were waiting far too long for an assessment of their refugee applications. As outlined in the joint media release by the Ministers for Home Affairs, Immigration and the Attorney General, "backlogs were allowed to grow exponentially across the entire migration system and delays in processing and reviewing onshore Protection visa applications, in particular, blew out."[28]

8.8 A decade ago, the then Immigration Department aimed to decide applications for onshore protection visas within 90 days. Now, people wait an average of 866 days (2.4 years) for a primary decision from the Department of Home Affairs, 1,330 days (3.6 years) for a merit-based review from the AAT, and 1,872 days (5.1 years) for appeals at the court level. This means that some applicants can wait 11 years for a final outcome.[29] There are approximately 70,000 people waiting for decisions from the Department, the AAT or the courts via the onshore Protection system (not including the 8,000 people rejected via Fast Track). People's reluctance to engage in return procedures may be more understandable given the often decade-long wait that they have endured. The Government's creation of this Bill to coerce people into returning does not take into account its own recognition that the protection systems in place for the past decade have been unfair, inefficient and ineffective in promptly recognising refugee protection needs.

8.9 It is paramount that the Australian Government refrain from using coercive tactics to facilitate repatriation or involuntary returns of people whose protection claims have not been fairly assessed.[30] UNHCR has previously made it clear that Australia should not coerce vulnerable people to return to harm.[31] For people not found to be refugees, more humane, community-based alternatives are used to engage and inform individuals of their removal options. Through

[25] Department of Immigration and Citizenship Annual Report 2009-2010, p. 168.
[26] See answers to Question on notice no. 762, Portfolio question number: BE23-762, 2023-24 Budget Estimates, as at 31 March 2023.
[27] John Gibson, "The removal of failed asylum seekers: international norms and procedures", December 2007, https://www.unhcr.org/au/media/removal-failed-asylum-seekers-international-norms-and-procedures-john-gibson
[28] "Restoring integrity to our protection system," 5 October 2023, see the media release here: https://minister.homeaffairs.gov.au/AndrewGiles/Pages/restoring-integrity-protection-system.aspx
[29] See Refugee Council of Australia, Submission to the Legal and Constitutional Affairs Committee on the Performance of the Administrative Appeals Tribunal, https://www.refugeecouncil.org.au/wp-content/uploads/2022/01/2021-AAT-Inquiry-RCOA.pdf
[30] Refugee Council of Australia. Refugee Response Index (RRI) Australia Review. February 2024. https://www.refugeecouncil.org.au/rri-towards-durable-solutions/
[31] UNHCR. Australia should not coerce vulnerable people to return to harm. August 2017. https://www.unhcr.org/news/news-releases/australia-should-not-coerce-vulnerable-people-return-harm

casework management, maintaining contact with families, and the provision of adequate health and legal support, individuals will be better placed to make informed decisions about their futures. Repatriation needs to be undertaken in safety and dignity in accordance with international law and the wilful consent of individuals. Using coercive measures will only bring further harm to individuals, cause distrust and halt any constructive engagement with the government.

Recommendations

The Refugee Council of Australia recommends that:

1. *The Migration Amendment (Removal and Other Measures) Bill 2024 be rejected in its entirety*

2. *The Australian Government establish a fair, efficient and thorough re-assessment of protection applications rejected via Fast Track, including an evaluation of new country information*

3. *The Parliament take into account the clear evidence that criminal sanctions will **not** encourage individuals to return to their country of origin where they face persecution. For people not found to be refugees, it is better that the Australian Government use humane and non-coercive measures to facilitate removal options. Evidence suggests that people who have been well-supported and are in good health are better placed to make their own decisions about removal options. Threats and punitive measures will only further exacerbate the issue.*