Immigration Advice and Rights Centre

22 November 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

Inquiry into the Migration Amendment Bill 2024

The Immigration Advice and Rights Centre (**IARC**) is a community legal centre (**CLC**) providing free legal advice and assistance to people throughout New South Wales. IARC is the only CLC in NSW that advises on all immigration, refugee, and citizenship matters. We provide advice in relation to migrant worker exploitation, immigration and domestic violence, Family visas, Refugee and Humanitarian visas, visa cancellations, and Australian citizenship. IARC's vision is for Australia's immigration system to be fair, just, and accessible. We leverage our experience and expertise to influence positive change through law reform and community development.

We welcome the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee's (**Committee**) inquiry into the Migration Amendment *Bill 2024* (**the Bill**). The short timeframe allowed by the Committee to receive submissions, however, has compromised our ability to adequately consider the Bill and assist the Committee with its inquiry and final report.

The Bill

The Bill, amongst other things, seeks to amend the Migration Act 1958 (Cth) (**Act**) with a view to:

- authorising the Commonwealth to take action in relation to third country reception arrangements, including the making of payments and anything else incidental or conducive to third country reception arrangements;
- authorising the collection, use and disclosure of information, including personal information, to the government of a foreign country for the purpose of determining whether there is a real prospect of the removal of a removal pathway non-citizen from Australia, and facilitating the removal of the non-citizen;
- allow for a subclass 070 (Bridging (Removal Pending)) visa (**BVR**) to cease immediately after a mandatory notice is given to the holder by the Minister where permission is granted by a third country for the holder to enter and remain in that country; and
- enable the Minister to make a decision that a protection finding would no longer be made in relation to a non-citizen who holds a visa as a removal pathway non-citizen.

Third country reception

Schedule 5 to the Bill seeks to insert s. 198AHB to the Act. The amendment contemplate that the Commonwealth will enter into an arrangement with a foreign country for the purpose of removing non-citizens to that foreign country. The amendment allows the Commonwealth to take any action in relation to the arrangements, the functions of the foreign country, the making of payments to the foreign country and anything else incidental or conducive to such action or payments. Relevantly, however, the Bill is silent on whether:

- the foreign country is required to have ratified relevant International Conventions;
- the foreign country meets relevant human rights standards; and
- the foreign country can accommodate the legal and practical needs of the non-citizens who are the subject of removal.

It is also not clear what opportunity non-citizens will be afforded to raise protection claims in relation to the foreign country – and what that process, if any, may look like.

The Committee will no doubt be aware that previous attempts to transfer non-citizens to third countries has resulted in costly litigation against the Commonwealth, significant human suffering and damage to Australia's international reputation. Indeed, the Committee need look no further than its own inquiry into the incident at Manus Island Detention Centre in 2014[1], the review by Philip Moss into 'the conditions and circumstances at the Regional Processing Centre in Nauru'[2], and the Committees 2017 inquiry into 'Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre'[3], to appreciate why the omission of statutory protections in the Bill for non-citizens in the foreign country is deeply troubling.

The Committee may also be minded to accept that the absence of statutory safeguards in relation to the requirement of conditions/circumstances in the foreign country will greatly restrict Judicial oversight of the existence of protections. If that is the intention behind the omission – it is, in our view, improper. In circumstances where no information has been provided about what the arrangement with a foreign country may entail and what protections will be in place, the assurance by the Minister in the Explanatory Memorandum that the Bill is "*compatible with human rights so long as policies, practices and procedures are in place to ensure that the power in these amendments are exercised consistently with Australia's human rights obligations*" offers little comfort.

The collection, use and disclosure of personal information

Schedule 4 to the Bill inserts s.198AAA in the Act with a view to allowing the Minister, or an officer of the Department, to collect, use or disclose information (including personal information) about a removal pathway non-citizen or former removal pathway non-citizen, to the government of a foreign country, for the purpose of determining the prospects and/or facilitating the removal of the non-citizen. Proposed subsection (3) sets out the circumstances in which the information must not be disclosed, however, the Bill

[1] Report – Parliament of Australia
[2] Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru
[3] Report – Parliament of Australia

is again silent on what measures the Commonwealth will take to ensure that the non-citizen's private information is protected in the foreign country and not shared with the non-citizen's country of nationality or country of former habitual residence. This is particularly troubling because there is no claim that the Commonwealth will have any control or influence over non-citizens or their personal information once they are residing in the foreign country.

Other observations and concerns

The Bill appears to extend well beyond introducing a power to remove to a foreign country only those non-citizens who may have had their visa refused or cancelled under the Character provisions. Other submitters have addressed this concern, and it is unnecessary for us to further repeat it.

The Bill further fails to identify an appropriate process by which a non-citizen's personal circumstances, including health, ties to the community and separation from children and family, will be appropriately considered. It is misplaced to assume that such matters would have been appropriately considered during the refusal or cancellation process – this, of course, is because in most cases decision makers would have proceeded on the assumption that the legal and/or practical consequence for a non-citizen who engaged Australia's non-refoulment obligations was either indefinite detention in Australia, or post *NZYQ v MICMA* [2023] HCA 37, ongoing presence in the Australian community on a BVR.

Conclusion

It is our view that the Bill does not establish an appropriate solution to allow for the removal of the intended non-citizens from Australia. The Bill is regrettably silent on important aspects including the nature of protections which will be sought by the Commonwealth when negotiating an arrangement with a foreign country. The omission of statutory protections presents a real risk that Australia will breach its international obligations and continue to cause harm to people and their Australian families. The Committee should recommend that the Bill not be passed in its current form.

Thank you again for the opportunity to comment.

Yours sincerely,

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