Human Rights Law Centre

3 September 2025

Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee members,

Home Affairs Legislation Amendment (2025 Migration No. 1) Bill

1. We write on behalf of the Human Rights Law Centre (the **Centre**) to address the dangers of the above legislation (the **Home Affairs Bill**), if passed into law.

2. The Centre is a national not-for-profit organisation and community legal centre. For more than a decade we have worked directly with people subject to offshore immigration detention, and migrants and refugees at risk of detention in our community. In 2023, the Centre appeared jointly with the Andrew & Renata Kaldor Centre for International Refugee Law at UNSW Sydney as *amici curiae* in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor* [2023] HCA 37. Since that time, we have advised a significant number of people released from immigration detention pursuant to *NZYQ*. We currently act for one of the three men subject to removal to Nauru under the 'interim arrangements' made earlier this year.[1] We are uniquely well-placed to provide evidence regarding the potential impact of this Bill.

3. We note that appearance at this inquiry has been limited to the Department of Home Affairs, and that submissions are otherwise closed to the public. We ask that these submissions nonetheless be tabled, and that the question set out here be asked of the relevant representatives of the Department in attendance at the hearing.

4. Because of the extraordinarily short timeframe between the announcement of this inquiry and the hearing, we have not had the opportunity to prepare comprehensive submissions regarding the impact of the Bill. Our analysis of it is otherwise set out in our **enclosed** explainer.

5. To summarise, our key concerns are that:

5.1. **The Bill will preclude consideration of people's health, the harm they face in Nauru, and whether they will be permanently separated from family in the making of 'third country reception arrangements'**. It has been drafted specifically to avoid such considerations being raised and properly considered, by excluding natural justice in the making of 'third country reception arrangements.' There is now no formal process through which such life-or-death matters must be considered before exiling a person to Nauru for the rest of their lives. Refugees previously sent to Nauru have been subject to widespread violence, including sexual violence. Many of the people at risk of transfer suffer from life-threatening medical conditions – including our client, S22 – and the standard of medical care

[1] *Plaintiff S22/2025 v Minister for Immigration and Multicultural Affairs* [2025] HCA 36.

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in Nauru has been described as 'tragically inadequate.' The law must not permit the Government to close its eyes to such serious considerations when making decisions that have lifelong consequences.

5.2. **The Bill will expose 80,000 people to arbitrary 'removal direction notices' without warning, which carry mandatory jail sentences if they fail to comply.** By depriving people of natural justice before 'removal direction notices' are issued, the Bill will prevent Departmental officers from having to ask basic preparatory question – such as whether it is even possible for a person to comply with a notice, or whether complying with it would expose them to danger. A 'removal direction notice' could be issued to a mother, requiring her to obtain consent from a child's father to make a passport application to facilitate the child's removal from Australia, even if the father had committed family violence and was the subject of an intervention order. The Bill would place the burden on people subject to 'removal direction notices' to advance arguments about the impossibility or danger of compliance in the course of resisting a mandatory 12-month jail sentence.

5.3. **The Bill seeks to shore up unlawful decisions, preventing them from being challenged in light of the dangers that people released from indefinite detention now face.** The Bill would retrospectively validate decisions made for people who are affected by *NZYQ,* which were made on the basis of now-outdated and incorrect law. Given the developments in the law, and the risks those people now face in light of their potential banishment to Nauru, those decisions ought to be reconsidered. Again, the purpose of the Bill is to prevent the Australian Government, and decision-makers, from having to confront the real consequences of what is being done to people.

6. In introducing the Bill to Parliament, and in public debate, the Government has made several erroneous and misleading claims about its purpose and application. For instance:

6.1. The Government has falsely claimed that the third country removal powers apply only to people who have exhausted all avenues to remain in Australia. That is that is demonstrably false. One of the three men subject to the 'interim arrangements' with Nauru successfully challenged a visa cancellation-related decision in the Federal Court of Australia.[2] He now has a case before the Administrative Review Tribunal.

6.2. The Government has claimed that all persons affected by the *NZYQ* judgment have committed 'serious offences' in Australia. That is categorically false. Our client, Ned Kelly Emeralds, was released from detention in November 2023 following *NZYQ* was after being held in detention for close to eleven years, while his visa application was processed. He has not been convicted of any serious crimes in Australia – he was indefinitely detained simply because the Government had the power to do so, until the High Court's decision in *NZYQ* was handed down.

6.3. The Government claims that the powers in the Bill are limited to people released from indefinite detention following *NZYQ*. This is false, by reference to the plain terms of the Bill. Nothing limits the powers only to particular persons or groups. For instance, a 'third country reception arrangement' could be made in respect of anyone the Australian government wished to remove from Australia. In evidence given to the Senate last year, the Department conceded that 80,000 people, including people presently in the community, could be removed to a third country.[3]

7. Fundamental misunderstandings about the scope of such powers, their potential application and effect on people in our community, is precisely why Parliamentary and public scrutiny of legislation is critical. If these powers concerned the rights of Australian citizens, the law-making process would not have been approached as it has.

8. We ask that the following questions be put to the Department of Home Affairs for response:

[2] *CDC25 v Minister for Immigration and Multicultural Affairs & Anor* (VID 194/2025).
[3] Commonwealth, *Parliamentary Debates*, Senate Legal and Constitutional Affairs Committee, 21 November 2024, pp 25-26.

8.1. If natural justice requirements are removed from third country reception arrangements, what part of the Migration Act guarantees that the Government will properly and fairly consider a person's non-refoulement claims in relation to the third country?

8.2. We know that women and LGBTIQ+ people have faced serious harm including sexual violence in Nauru. The Government does not want to have to give people notice or ask them for any input when exercising its third country removal powers. What, therefore, is the process for the Government to ensure that women and LGBTIQ+ are not subject to third country removal to Nauru or other places where they risk gender and sexuality based harm?

8.3. The Explanatory Memorandum to the Bill notes that third country deportation powers are only intended to be used in relation to people who have exhausted all appeal pathways in Australia. How does this reconcile with the fact that at least two of the three men initially targeted for removal had clearly not exhausted all of their appeal pathways?

Is the third country reception arrangement announced by Minister Burke on Friday last week presently 'in effect'?

8.4. The Explanatory Memorandum to the Bill notes that third country deportation powers are only intended to be used in relation to people who have exhausted all appeal pathways in Australia. How does this reconcile with the fact that at least two of the three men initially targeted for removal had clearly not exhausted all of their appeal pathways?

8.5. Is the third country reception arrangement announced by Minister Burke on Friday last week presently 'in effect'?

8.6. How many removal pathway directions has the Government issued under s 199C of the Act and to whom?

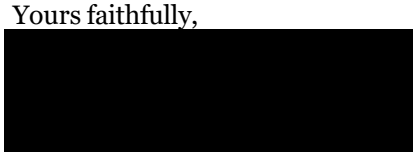
8.7. How many criminal charges have been brought under s 199E of the Act as a result of non-compliance with a removal direction?

8.8. How many visa decisions does the Government believe to be affected by error of the kind identified in *AJN23 v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 304 FCR 586?

8.9. How many criminal charges have been brought as a consequence of visa decisions affected by errors of this kind? What are the nature of the offences?

9. We are available to clarify and add to any aspect of these submissions and would welcome the opportunity to do so.

Yours faithfully,



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